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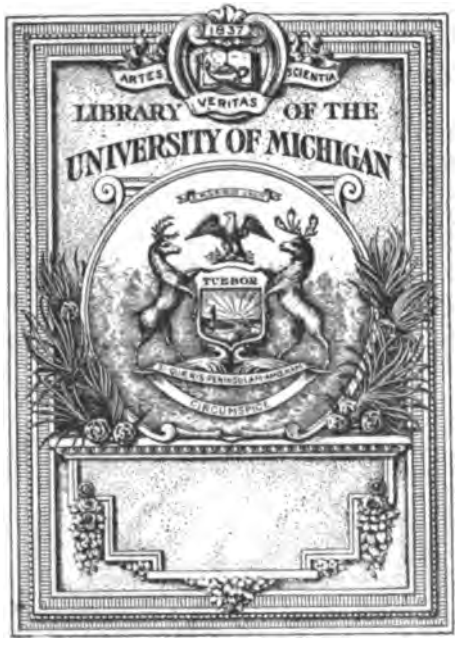
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 50

DECISIONS OF THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

MAY, 1918, TO AUGUST, 1918

REPORTED BY THE COMMISSION

WASHINGTON
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INTERSTATE COMMERCE COMMISSION.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 6324.

BITUMINOUS COAL RATES TO THE SOUTHEAST.

Submitted March 13, 1918. Decided May 6, 1918.

Upon the petition of the Cotton Manufacturers' Association of North Carolina, intervener, for a modification of the finding made in our original report herein; *Held*, That the facts submitted on rehearing do not justify the proposed change in the rate groupings or the placing of Charlotte, N. C., in a lower rate group. Petition dismissed.

William A. Wimbish for Cotton Manufacturers' Association of North Carolina, intervener.

Otis Mouser for Stonega Coke & Coal Company.

T. D. Hobart for Norfolk & Western Railway Company.

J. J. Campion for Carolina, Clinchfield & Ohio Railway Company.

Other appearances as shown in the original report.

Report of the Commission on Rehearing.

Harlan, *Commissioner:*

This further hearing in the above-entitled proceedings was had for the purpose of determining whether any error was made under the original report in the grouping of Charlotte in the state of North Carolina.

In the original report, 37 I. C. C., 652, we considered (*a*) the rates charged for the transportation of bituminous coal from mines in the states of Virginia, West Virginia, Kentucky, and Tennessee, to destinations in the southeast, principally in the states of North Carolina and South Carolina; and (*b*) the rate relationship of the several producing fields. We found the rates unreasonable and unjustly discriminatory in the particulars pointed out in the report and suggested a basis for reasonable and nondiscriminatory rates for the future.

The principal coal fields involved in this proceeding are at Coal Creek in east Tennessee, Appalachia, and Dante in southwest Virginia, and Pocahontas in West Virginia. The rate groups involved by the findings of the original report, *supra*, are referred to in

the present record as zones 1, 2, and 3. Zone 1 includes points on and north of the line of the Southern Railway from Winston-Salem through Greensboro, Durham, Raleigh, and Selma to Goldsboro; zone 2 includes points in the territory south of this line and on and east of a line beginning at Barber Junction and passing through Salisbury, Norwood, Wadesboro, Florence, and Lanes to Georgetown; and zone 3 includes points west of the last-mentioned line and on and east of a line extending from Barber Junction through Charlotte, Chester, Columbia, and Denmark to Charleston. In the previous report we found that the rates from the Pocahontas district to points in zone 1 should be not less than 20 cents per ton lower than the rates from Coal Creek; that to points in zone 2 the rates from Pocahontas and Coal Creek should be the same; and that to points in zone 3 the rates from Coal Creek should be not less than 20 cents per ton lower than from the Pocahontas district. We further found that the rates from the Appalachia and Dante districts in southwest Virginia to Carolina territory, including points in zone 3, should not exceed the rates contemporaneously charged from Coal Creek to the same destinations. No groupings or rates were prescribed for the territory west of zone 3, but in that territory zone 4 and other zones west and south of zone 3 were voluntarily established by the carriers at the time the readjustments of rates to zones 1, 2, and 3 were made in conformity with our finding.

Following the original report, *supra*, a petition was filed on behalf of the Cotton Manufacturers' Association of North Carolina, as an intervener, for a modification of the report and order therein fixing the zone adjustment indicated. That part of the petition relating to the purpose for which the rehearing was granted alleges that zone 2 as defined in the report should be enlarged and extended by drawing west and south lines thereto from Barber Junction along the line of the Southern Railway through Mooresville to Charlotte, thence along the Seaboard Air Line Railway through Monroe to Wadesboro, and thence south along the line originally defined by the Commission through Florence and Lanes to Georgetown; and that to all points in this zone as thus extended the rates from Coal Creek, southwest Virginia, and West Virginia should be the same to the respective destinations. As an alternative it is suggested that a new zone be created, defined as follows: Beginning at Barber Junction, thence along the line of the Southern Railway through Mooresville to Charlotte, thence along the line of the Norfolk Southern to Norwood, and thence along the west line of zone 2 through Salisbury to Barber Junction. It is asked that the rates from Pocahontas to Charlotte and points in the proposed new zone shall not exceed the rates from Coal Creek and southwest Virginia by more than 10 cents a ton.

It may be well at this point to state that since the original hearing in this proceeding all the rates then under consideration have been advanced by 10 cents a ton under a permission granted in connection with *The Fifteen Per Cent Case*, 45 I. C. C., 303. This advance, however, did not affect the relationship of any of the rates required under the original report herein.

The following table shows the rate situation, by the ton, at Charlotte before and after the effective date of the original order herein, together with the rates that would prevail under the proposed extension of zone 2 or the creation of a new zone as suggested by the petitioner.

From—	West Virginia (Pocahontas).	Southwest Virginia (Dante and Appalachia).	Tennessee (Coal Creek).
Before the order	$2.35	$2.25	$2.15
After the order	2.35	2.15	2.15
Present rates	2.45	2.25	2.25
Rates under proposed extension of zone 2	2.25	2.25	2.25
Rates under proposed new zone	2.35	2.25	2.25

It will be observed that prior to this proceeding the rate from the West Virginia mines to Charlotte was 10 cents higher than from the southwest Virginia mines, and 20 cents higher than from the Tennessee mines. As a result of our finding the rate from the West Virginia mines to Charlotte was made 20 cents a ton higher than from the Tennessee and southwest Virginia mines by a reduction of 10 cents a ton in the rate from southwest Virginia, the rates from West Virginia and Tennessee remaining the same as before. Under the proposed enlargement of zone 2 the rates from West Virginia, southwest Virginia, and Tennessee to Charlotte would be made the same by a reduction of 20 cents in the rate from West Virginia. Under the alternative proposition of a new zone, suggested in behalf of the complainant, the present rate from West Virginia to Charlotte would be reduced 10 cents a ton and would exceed the rates from southwest Virginia and Tennessee by 10 cents a ton.

It seems obvious that the principal, if not the only purpose, of the petition is to reduce the rate from West Virginia mines to Charlotte. It does not appear, however, that Charlotte has any cause of complaint under the original decision in the case. As a matter of fact it obtained a reduction of 10 cents a ton on coal from the southwest Virginia mines while the rates from the West Virginia and Tennessee mines were not changed.

It was shown that Charlotte consumes 100,000 tons or more of coal a year, practically all of which is obtained from the West Virginia

or southwest Virginia mines. Very little, if any, coal is received from the Tennessee mines. In support of the contention that Charlotte should enjoy zone 2 rates the petitioner alleges that comparative distances, from Coal Creek to Charlotte and from Pocahontas to Charlotte, should be used as the controlling factor, and the principal witness for the petitioner submitted figures purporting to sustain that theory. On the other hand the defendant carriers aver that the average distances shown are the straight averages and are not representative of the weighted averages; that inasmuch as there is no movement of coal from the Tennessee mines to Charlotte the commercial competition there is between the southwest Virginia field and the West Virginia field; and that if the tonnage movement or the weighted averages were considered the difference would be practically represented by the distance from the Dante and Appalachia mines in the southwest Virginia field on the one hand and the West Virginia field on the other. It is the further contention of the defendant carriers that because of fourth section restrictions the granting of the relief asked for by the petitioner would of necessity require the making of similar reductions at a great many points, and that should the old rate of $2.15 from Coal Creek be established from the West Virginia mines to Charlotte that rate would have to be observed as a maximum under the long and short haul rule at all points on the route between Winston-Salem and Barber Junction. Charlotte being located near the extreme western boundary line of zone 3, a reduction in the rates thereto would affect vastly more tonnage in the intermediate territory than moves to Charlotte. Moreover, the placing of Charlotte in zone 2 would wholly disrupt the rate adjustment prescribed by the Commission in the original report, and would necessitate the reopening of the entire matter. The Southern Appalachian Coal Operators' Association, also an intervener, concurs generally in the views of the defendant carriers.

The reasonableness of the rates was not involved in this proceeding, and there seems to be no substantial ground for the contention of petitioner that Charlotte should be placed in zone 2 instead of zone 3. In the original report, *supra*, we said at page 662:

> The line of approximately equal distances from Coal Creek and Pocahontas, where a parity in rates would reasonably be expected to exist, begins at Barber Junction in North Carolina and extends in a southeasterly direction through Salisbury and Wadesboro to Florence in South Carolina.

The boundaries of zone 3, in which Charlotte is located, were fixed by the Commission after a careful study of all the conditions shown by the voluminous record in the proceeding and the readjusted rates made under our finding have been generally accepted as reasonable and just both by the carriers and the coal operators. No facts

were submitted on the rehearing that would justify the placing of Charlotte in a lower rate group, or for the change in grouping asked for by the petitioner, and although on the original hearing the defendant carriers strenuously contended that the grouping and differentials then existing should not be changed, they now oppose just as vigorously any further change. At the original hearing all the numerous contending parties availed themselves of the opportunity to advocate their particular views, and after careful consideration of the whole subject the Commission ordered the present grouping. In *Clyde Coal Co.* v. *P. R. R. Co.*, 23 I. C. C., 135, 138, we said:

> All grouping for rate purposes is necessarily more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. Yet the line must be drawn somewhere or the grouping abandoned. Once established groups should not be lightly or unnecessarily disturbed.

We do not find on the whole record before us any substantial basis for a readjustment of the rate groupings fixed in our original report; the petition must therefore be dismissed and it will be so ordered.

No. 9506.

TERRELL COMMERCIAL CLUB

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted February 10, 1918. Decided May 2, 1918.

For the purpose of making rates on grain, grain products, and hay from points in Kansas and Oklahoma, destinations in the state of Texas are arranged in three main groups, known as groups 1, 2, and 3. A fourth group, known as group A, has been carved out of group 1 and rates to points in group A apply only from points in Oklahoma. Group A is a result of the Commission's decision in *Mitchell* v. *A., T. & S. F. Ry. Co.*, 12 I. C. C., 324, and broadly described, includes only Fort Worth, Dallas, and points north thereof between Wichita Falls on the west and Greenville on the east, to the Oklahoma-Texas state line. Upon a complaint which alleged that the rates on grain, grain products, and hay from points in Oklahoma, to Terrell, Tex., in group 1, are unreasonable and subject Terrell to undue prejudice and disadvantage, as compared with rates from the same points of origin to Dallas, Greenville, and other points in group A, *Held:*

1. The rates on grain and grain products and hay, in carloads, from points in Oklahoma to Terrell are not shown to be unjust or unreasonable.
2. The general adjustment of rates on grain and grain products from points in Oklahoma to Dallas, Greenville, and other points in Texas, substantially north or west of Terrell, and to Terrell, does not subject Terrell to undue prejudice and disadvantage.
3. Terrell is not entitled to be included in group A.
4. Rates on grain, grain products, and hay from points in Oklahoma to Terrell, compared with the rates on the same commodities from the same points to Dallas, Greenville, and other similarly situated points in Texas, do subject Terrell to undue prejudice and disadvantage in and to the extent that they exceed the rates on those commodities to group A points by more than 2.5 cents per 100 pounds.
5. The defendants should correct the adjustment of rates on grain, grain products, and hay as between Dallas, Greenville, and Terrell.

S. H. Cowan for complainant.

C. S. Burg, J. F. Garvin, F. R. Dalzell, P. T. Lomax, T. J. Norton, M. J. Dowlin, W. F. Dickinson, J. A. Lynch, Geo. Thompson, and *A. E. Haid* for defendants.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

Complainant, a voluntary organization, representing the business interests of the town of Terrell, Tex., attacks the rates on grain, grain

products, and hay, in carloads, from points in Oklahoma to Terrell as being unjust, unreasonable, and unduly prejudicial as compared with the rates on the same commodities to points in northern Texas, hereinafter referred to as group A points. Although the allegation is made that the rates to Terrell are unjust and unreasonable, that charge was not pressed at the hearing, and the proceeding has resolved itself into an effort on behalf of complainant to have Terrell included in group A.

Terrell is located 32 miles east of Dallas on the Texas & Pacific Railway, hereinafter called the Texas & Pacific, where the Texas Midland Railroad crosses that line. By way of the latter it is 32 miles south of Greenville and 10 miles north of Kaufman, Tex. These two roads are the only rail carriers serving Terrell, and neither of them has rails extending into Oklahoma. Terrell has a population of more than 8,000.

Rates on the commodities named from points in Kansas and Oklahoma to points in Texas are made by arranging the points of destination in three main groups, known as groups 1, 2, and 3. From more distant points rates are made with regard to those from primary grain markets, such as Kansas City, Mo.; from points in Kansas and Oklahoma the rates decrease in substantial accordance with the lessening of distance; and from Oklahoma points this general adjustment is modified to fit the particular circumstances of certain destinations in northern Texas not far from the Oklahoma-Texas state line. This modification of rates from Oklahoma was the result of certain proceedings before this Commission.

On July 8, 1907, the Commission decided the proceedings known as *Mitchell* v. *A., T. & S. F. Ry. Co.*, 12 I. C. C., 324, and *Farmers, Merchants & Shippers' Club of Kansas* v. *A., T. & S. F. Ry. Co.*, 12 I. C. C., 351. At that time the major portion of Texas destinations were divided into groups 1, 2, 3, and 4, of which groups 3 and 4 corresponded to the present group 3, group 2 was the same as at present, and group 1 was the same as present groups 1 and A. In the *Farmers Case*, *supra*, the Commission said:

> The third class of rates attacked in this proceeding are those from these same stations in Kansas to points in Texas for domestic consumption. For the purpose of naming these rates Texas is divided into four groups. * * *
>
> Group 1 extends nearly across the entire breadth of the state of Texas east and west and is from 100 to 150 miles from north to south. Group 4 includes most of the southern portion of the state, groups 2 and 3 being comparatively small in area. The rates above named not only apply to any point in a given group, in the first instance, but under the various transit privileges allowed grain may be unloaded at an intermediate point and afterwards sent on to any point in Texas at the rate applicable to that group. These groups have been in effect in substantially their present form for a long time, and various

business conditions relating to the handling and milling of grain have adjusted themselves to this system of rate making.

The millers of Wichita Falls, the milling and grain interests of Fort Worth and Dallas, as well as similar interests from certain other towns in northern Texas, appeared and were heard in this proceeding. Neither the complainants nor the defendants nor any of the interveners suggested that this group arrangement should be interfered with. Indeed, it seemed to be the universal opinion that it ought to remain as it is. It was claimed that rates from certain points in Oklahoma were unduly high to near-by points in these groups; but considering merely the stations in Kansas which are involved in this complaint, there was no serious claim that this scheme of group rates might not properly be and, indeed, ought not to be retained. In view of the attitude of all parties, the Commission will not disturb in this proceeding this system of rate making.

This leaves for consideration merely the reasonableness of the rates themselves. In determining that it must be carefully kept in mind that we are passing not upon a rate from a particular point like Wichita to a particular point like Fort Worth. That rate is not merely to Fort Worth. It carries grain from Wichita into any part of group 1, and it gives to it the facility of stoppage in transit in any point in that group.

It must also be borne in mind that these groups include the entire state of Texas and stand in relation one to another. For the additional payment of 5 cents per 100 pounds, grain which has paid a charge of 33 cents to Fort Worth from Wichita can be sent to any part of groups 3 and 4 and for 2½ cents to any part of group 2.

If the complainants desire that this group system be retained, then the railways must have the benefit of the fact that these are not rates to individual towns, but rates to extensive areas. * * *

In the *Mitchell Case*, *supra*, the Commission said:

For the purpose of naming rates from wheat-producing sections in Kansas and Oklahoma, the state of Texas is divided into four groups, which are so related to each other that in effect the state itself is an entire group subdivided. In *Farmers, Merchants & Shippers' Club of Kansas* v. *A., T. & S. F. Ry. Co.*, and *Same* v. *C., R. I. P. Ry. Co.*, *infra*, we, upon the request of both complainants and defendants, declined to disturb this system of rate making, and rates to Texas points from all stations in Kansas are now made upon this group basis.

In so holding we said that the reasonableness of these rates must be determined, not by considering the rate from the point of origin to a particular station in the group, but rather as applicable to the entire group. It is evident that every system of group rates must occasion more or less discrimination. The rate to the nearer edge of the group as compared with that to the more distant edge is of necessity discriminatory. This discrimination grows relatively more in proportion as the distance from the group decreases, and plainly there must come a point when the point of origin is so near the group that the discrimination will become undue.

In the case before us we do not think that Fort Worth and Oklahoma City ought to bear the burden of a rate which carries the transportation, not only to these points, but also to other points much more distant. These communities are in such proximity that they are entitled to have established between one another a reasonable rate which will permit the consumers at Gainesville and Fort Worth to buy in Oklahoma City and transport from there at a reasonable

charge. In the fixing of this charge we may properly have reference to the fact that the group system prevails from points farther north, and that this is transition territory.

In the *Mitchell Case* the Commission did not create group A and the rates ordered to be established therein were for local traffic to Gainesville and Fort Worth only. In obeying that order the carriers carved group A out of group 1, following the lines of the defendants in that proceeding from Fort Worth and Dallas northward observing the requirements of the fourth section of the act. The present record indicates that in so doing the outer boundaries of group A were limited as far as possible to points to which the haul from Oklahoma could be made by a single line, and to which the distances were not excessive; that group A rates were extended to points on the Texas & Pacific between Fort Worth and Dallas as making the southern boundary of that group, although that carrier does not reach Oklahoma; and that the group rates were extended to all points geographically included within these outlines whether the hauls involved one or more than one line. It should be noted here for accuracy of statement that the Rock Island system applies group A rates only from and to points reached by its own rails; perhaps this is true also of some other of the defendants. It should also be noted that group A rates do not apply from all points in Oklahoma to all points included within group A boundaries; for from points in southern Oklahoma to near-by points in group A special rates lower than the group A basis are applied.

Group 1 embraces all points in northern Texas within the following bounds: Beginning in the west at Quanah on the Fort Worth & Denver City Railway to Bowie; thence south along the line of the Chicago, Rock Island & Gulf Railway, embracing stations on the Jacksboro branch to Jacksboro, inclusive, to Fort Worth; thence west along the line of the Texas & Pacific to Weatherford and Lambert; thence north from Weatherford on the Weatherford, Mineral Wells & Northwestern Railway to Mineral Wells and from Weatherford along the line of the Gulf, Colorado & Santa Fe Railway to Dallas via Cleburne, thence east along the line of the Texas & New Orleans Railroad to Kaufman, included in group 1 by order of the Commission in *Kaufman Commercial Club* v. *T. & N. O. R. R. Co.*, 31 I. C. C., 167; thence north on the line of the Texas Midland to Terrell, thence east on the line of the Texas & Pacific to Waskon and the Texas-Louisiana state line. From Marshall on the Texas & Pacific there is an extension of group 1 rates toward the southeast along the line of the Marshall & East Texas Railway to Elysian Fields.

All points in northern Texas, embraced within the boundaries of group 1, as above described, are upon a parity of rates from points

north of the Kansas-Oklahoma state line. From points in Oklahoma to certain points in this group the distances are comparatively short, and the transportation, generally, is by a single line as described above. These points are included in group A, the outlines of which are as follows: Beginning at Wichita Falls, the line extends east along the Missouri, Kansas & Texas Railway of Texas, hereinafter called the M., K. & T., to Ringgold; thence south via the Chicago, Rock Island & Gulf Railway to Fort Worth, embracing stations on the Jacksboro branch to Jacksboro, inclusive; from Fort Worth east along the Texas & Pacific to Dallas; thence along the M., K. & T. northeast to Bells via Greenville; the Texas & Pacific to Bonham; and the M., K. & T. to Denison.

From points in Kansas, it will be seen from the above, Terrell takes group 1 rates with Forth Worth, Dallas, and Greenville; whereas from points in Oklahoma, Terrell remains in group 1 and Fort Worth, Dallas, and Greenville are taken out of group 1 and placed in group A, receiving a somewhat lower basis of rates than Terrell.

An exhibit filed in behalf of complainant purports to show that Terrell is less distant from certain Oklahoma points than certain selected points in group A. It is sufficient to say that this exhibit includes at least one route over which the rates do not apply, and that the points in group A with which Terrell is compared appear generally to be situated near its outer boundaries. From two exhibits filed in the record it appears that an approximation to the average short-line distance from Oklahoma points to points located in group A is 226 miles, whereas an approximation to the average distance from Oklahoma point to points in group 1 is 268 miles. It is also shown that whereas Terrell can in no instance be reached by a single line from any point in Oklahoma, that 71 per cent of the destination points embraced in group A can be so reached, and that to only 29 per cent must the haul pass over two or more lines.

The rate structure is shown in the following table, taken from an exhibit filed in behalf of complainant:

Rates from points in Oklahoma to points in Texas, groups A, 1, 2, and 3.

	Flour.	Grits and cornmeal.	Corn chops.	Bran.	Corn and oats.	Wheat.	Hay.
From Sapulpa and Muskogee to—							
Group A	31	26.5	25	26	22.5	26	18
Group 1	31	26.5	25	6	22.5	26	26.5
Group 2	33.5	28	27.5	28.5	25	28.5	28
Group 3	36	29.5	29	31	26.[illegible]	31	30.5
From Ardmore to—							
Group A	24	19.5	19	20.5	16.5	19	22
Group 1	26	21	20.5	21	18	21	23
Group 2	28.5	23.5	23	23.5	20.5	23.5	25.5
Group 3	31	25	24.5	26	22	26	28

Rates on grain and grain products from points in Oklahoma to group A points are lower than to group 1 by 0.5 cent from Altus, by 1.5 cents or less from Hobart and Clinton, by 3.5 cents or less from Oklahoma City and Hugo, and by 3.75 cents or less from Ada. The rates from Shattuck to groups A and 1 are the same on grain, grain products, and hay. The rates on flour, bran, and wheat are, in cents, the same as given in the table above from Sapulpa and Muskogee. The rates on the other commodities, except hay, are in each instance 0.5 cent less than the rates from Sapulpa. On hay the rate is 2.5 cents greater than from Sapulpa. From Pryor and Vinita there is no differential between groups A and 1 on grain and grain products, but on hay the rates are 5.5 cents higher to group 1 than to group A. The differential against group 1 and in favor of group A is 7 cents on hay from Oklahoma City.

It is not necessary to prolong this discussion of the rate situation from points in Oklahoma to points in Texas in groups A and 1; it is obvious that the carriers have generally recognized the importance of diminishing the differentials between the two groups as distances increased; but there are certain anomalies shown in these rates which require correction. It will be observed that the differentials between groups 1 and 2, and 2 and 3 are 2.5 cents or less, and no higher differentials should exist between groups A and 1. What is said with respect to the differentials between the groups is not to be interpreted as authorizing increased rates to groups 1, 2, and 3. Where the differentials between group A and group 1 are now less than 2.5 cents they should not be increased to that figure.

It should be found that the rates on grain, grain products, and hay from points in Oklahoma to Terrell are not unreasonable, for they are substantially the rates which the Commission did not condemn in the proceedings cited above; but it should be found that differentials on grain, grain products, and hay in the rates to Terrell over the rates to points in group A which exceed 2.5 cents per 100 pounds do subject Terrell to undue prejudice and disadvantage. It follows, of course, that to other points in group 1 rates should be revised accordingly. The question remains whether Terrell should be taken out of group 1 and placed in group A.

The southeastern boundary of group A is along the line of the M., K. & T. from Dallas to Greenville, a distance of 54 miles. Terrell is at the apex of an isosceles triangle, 32 miles from both Dallas and Greenville and about 18 miles across country from Royse and Rockwall on this southeastern boundary, from which points it claims to meet competition. Obviously Terrell's disadvantage is measured mathematically by whatever differences there are between the rates to group A and to group 1, but

the record contains no proof that a disadvantage not exceeding 2.5 cents per 100 pounds is undue unless it be considered that for geographical or transportation reasons Terrell ought to be included in group A. No such reasons have been shown, and the extension of group A rates to Terrell would inevitably result in the inclusion of Kaufman also in group A. In the *Kaufman Commercial Club Case*, *supra*, we found that—

> There is no natural boundary line between Kaufman and Terrell which would justify placing these towns in different rate-making groups.

This, of course, would not be a ground for the exclusion of Terrell from group A if it were otherwise entitled to be embraced therein; nothing shown in this record is even persuasive that Terrell should have group A rates. Group A is the result of special conditions among which may be mentioned the primacy of Fort Worth as the grain market of Texas; the commercial rivalry of Fort Worth and Dallas; the direct service rendered Oklahoma points and Gainesville-Dallas-Fort Worth by the defendants in the *Mitchell Case*, that is, by the Santa Fe, the Rock Island, the Frisco, and the Katy lines; the fourth section of the act; and geographical location. Terrell is not affected by any of these conditions and is not entitled to be included in group A.

This proceeding brought to the attention of the defendants an error in the application of group A rates in that to intermediate points on the Paris & Mount Pleasant Railroad, a line 51 miles in length running from Paris, in group 1, to Mount Pleasant, also in group 1, group A rates were published. This publication was obviously an error and has been corrected.

The transit rules of the carriers applicable to shipments of grain from Oklahoma points place Terrell upon an equality with all points in group A to all points in group 1 and higher rated groups. Terrell, however, desires transit on grain milled at Terrell and shipped thence to points in group A. Such rates would involve, generally, back hauls. To points in group A on the Texas & Pacific Railway, Terrell now has such transit rules, group A rates applying on the product and an out of route charge being assessed in addition to the rates.

ANDERSON, *Commissioner:*

The foregoing is, with a few minor changes, the report proposed by the examiner. No exceptions thereto were filed. As pointed out, there are a great many inconsistencies in the rates to group A as compared with the rates to group 1. This is especially true in so far as the rates on hay are concerned. The differences in the rates on hay between groups 1 and 2 and groups 2 and 3 are 2.5 cents, whereas

the differences between the rates to group A and 1 are from 0 to 8 cents. The differences in the rates on grain and grain products between groups 1 and 2 and between groups 2 and 3 do not in any case exceed 2.5 cents. No reason appears why the rates from group 1 should be more than 2.5 cents higher than the rates from group A.

Upon consideration of the record we adopt the proposed report and findings of the examiner as the report and findings of the Commission. The carriers will be given 60 days from the service of this report to readjust their rates to the basis suggested. If this is not done, we will consider the matter further with a view to entering an order.

INVESTIGATION AND SUSPENSION DOCKET No. 1128.

SISAL FROM NEW ORLEANS, LA.

Submitted March 20, 1918. Decided May 2, 1918.

Proposed increases in domestic rates for the transportation of sisal, carloads, from New Orleans and Port Chalmette, La., to destinations in the states of Kansas, Missouri, Iowa, Minnesota, Wisconsin, South Dakota, and North Dakota found to have been justified.

W. M. Rhett for Illinois Central Railroad Company.

Oliver E. Sweet, *J. J. Murphy*, *P. W. Dougherty*, and *D. L. Kelley* for board of Railroad Commissioners of the state of South Dakota.

G. C. Redfield for South Dakota state penitentiary.

M. C. McMillan for Minnesota state penitentiary.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The respondents herein proposed to increase the domestic rates for the transportation of sisal, carloads, minimum weight 20,000 pounds, from New Orleans and Port Chalmette, La., to Jefferson City, St. Joseph, and Kansas City, Mo.; Atchison, Lansing, and Leavenworth, Kans.; Minneapolis, Minnesota Transfer, St. Paul, South Stillwater, and Stillwater, Minn.; Waupun, Wis.; Level Siding and Sioux Falls, S. Dak.; Sioux City, Iowa; and Bismarck, N. Dak., 2 cents per 100 pounds. The rates proposed, in cents per 100 pounds, are as follows: To Jefferson City, 38; to the other Missouri and to the

Kansas points, 41; to the Minnesota and Wisconsin points, 42; to Sioux City, 47; to the South Dakota points, 47½; and to Bismarck, 77.

Sisal is a vegetable fiber used for making binder twine and rope. All the sisal imported through the port of New Orleans originates at Progreso, state of Yucatan, Mexico. The proposed increased rates apply on that sisal only which has been stored in private or public warehouses or otherwise lost its identity as an imported commodity. The import rates, which are not here in issue, apply from ship side or upon sisal stored in railroad warehouses.

Upon protests of the Board of Railroad Commissioners of the state of South Dakota for and on behalf of the state penitentiary of South Dakota, located at Level Siding, 3 miles north of Sioux Falls, and of the Railroad and Warehouse Commission of the state of Minnesota, the operation of the item containing the proposed increased rates was suspended until July 8, 1918.

In the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 621, we held, among other increases in import rates from Gulf ports there permitted, that increased rates then proposed on sisal produced in Mexico, had been justified. This proceeding is an aftermath of that decision in respect of the import rates on sisal. Respondent's witness testified that the normal basis used in making domestic rates for the transportation of sisal from New Orleans had been 6 cents higher per 100 pounds than the import rates on sisal from New Orleans to the same destination. When the import rates from New Orleans were increased following the *1915 Western Rate Advance Case*, *supra*, the 6-cent basis of difference was disturbed in that the domestic rates thereby became but 4 cents over the corresponding import rates. For example, the present import rates from New Orleans to the named Minnesota destinations are 36 cents per 100 pounds; prior to September 20, 1915, they were 34 cents per 100 pounds. The proposed increases in these rates from 40 to 42 cents per 100 pounds restore the previously existing relationship.

Domestic rates from New Orleans and Port Chalmette to Akron, Cleveland, Mansfield, Newark, Toledo, Dayton, Miamisburg, Middletown, and Xenia, Ohio, and Jackson, Mich., applicable to the transportation of sisal, carloads, were increased, effective September 15, 1917, to make them 6 cents per 100 pounds higher than the import rates on sisal from New Orleans to the same destinations. No protests were filed to stay the operation of these rates, and they were not suspended.

On February 2, 1918, the carriers respondent herein, through their agent, filed Fifteenth Section Application No. 3209, requesting authority to establish rates, applicable on domestic traffic, for the transportation of sisal, carloads, minimum weight 20,000 pounds, from

New Orleans and points taking the same rates to the points named below. The rates, stated in amounts per 100 pounds, are uniformly 2 cents per 100 pounds higher than the present rates, and if the authority asked is granted would be 6 cents per 100 pounds higher than the present rates on import traffic from and to the same points: To Cairo and East St. Louis, Ill., and St. Louis, Mo., 23 cents; Evansville, Ind., and Louisville, Ky., 24.5 cents; Chicago and Peoria, Ill., Cincinnati, Ohio, and Covington, Ky., 26 cents; Michigan City, Ind., 29 cents; and Milwaukee, Wis., 30 cents. No action upon this application has been taken by the Commission.

While the primary purpose of the increased rates proposed is the restoration of the previously existing relationship, domestic rates over import rates, respondents insist that the present domestic rates are unreasonably low and that the proposed rates are reasonable *per se* and relatively. To demonstrate this proposition data were submitted of the average car loading of various commodities transported from New Orleans to Sioux Falls, accompanied with the rates per 100 pounds applicable to their transportation, from which the average revenues per car are computed, compared with similar data applicable to the transportation of sisal from New Orleans to Sioux Falls. The testimony follows in statement form:

Commodity.	Average loading.	Rate.	Average car revenue.
	Pounds.	*Cents.*	
Coffee	53,700	36	$193.32
Sugar	53,800	34.4	185.07
Rice	53,800	45	242.10
Molasses	40,000	38	152.00
Mohogany lumber	50,000	42	210.00
Bananas	20,000	73	146.00
Pineapples	21,800	71	154.78
Canned goods	40,000	45	180.00
Sisal	27,000	[1] 47.5	128.25

[1] Proposed.

None of the commodities earns so low a revenue as sisal; none is so valuable. The price of sisal in March, 1914, f. o. b. Level Siding, was 5¾ cents a pound; in December, 1917, the price f. o. b. New Orleans was 19⅜ cents a pound. Green coffee, the article of the highest value in the above list, in December, 1917, sold for 14 cents a pound, f. o. b. New Orleans. The present value of a carload of sisal is approximately $5,000.

The specific gravity of sisal is low; a bale weighing 370 pounds is 25 cubic feet in dimension and approximately 70 such bales can be loaded in a 40-foot car. The baled sisal is uncovered and secured with rope ties. Sisal is very dry, hence highly inflammable and readily damageable from moisture. It is transported in closed equipment—box and refrigerator cars.

No protestant, other than the state penitentiary of South Dakota, submitted testimony. That institution is equipped with a plant for the manufacture of binder twine. It is operated to capacity and produces each year about 3,250,000 pounds of the commodity.

The United States Food Administration recently entered into an agreement with the Comision Reguladora del Mercado de Henequen of Mexico, which controls sisal produced in the state of Yucatan, Mexico, to supervise the sale in this country of 100,000 bales of sisal, on which the price was fixed by the food administration at 19 cents a pound, f. o. b. New Orleans. The purchase and distribution of this sisal is to be through the food administration. The warden of the state penitentiary of South Dakota is apprehensive lest the United States should acquire warehouses at New Orleans for the storage of sisal, in which the sisal would lose its identity as an imported commodity and hence be subject to the payment of the domestic rates here proposed to be increased. The Illinois Central Railroad Company, the only respondent represented at the hearing, transports practically all the sisal imported through the port of New Orleans. In the year 1916 it transported 135,000 tons of sisal from New Orleans, for the transportation of all of which import rates were paid. All but 54,000 tons of this total were forwarded to Chicago and Deering, Ill., Level Siding and Sioux Falls, Stillwater and St. Paul. The state penitentiary at Level Siding has never paid domestic rates on any shipments of sisal. The Illinois Central Railroad had on storage in its Stuyvesant docks at New Orleans, in December, 1917, 65,000 bales of sisal and had space there for 200,000 more bales if no other commodity was also stored. There is no testimony that the United States has in contemplation any change in the present method of forwarding sisal from ship side or from railroad storage at New Orleans.

The state penitentiary of South Dakota has used some manila hemp grown in the Philippine Islands, Java, Australia, and Africa, as a filler in the manufacture of binder twine. The import rates on sisal imported through the port of New Orleans specifically apply to the transportation of that produced in Mexico. Although in these abnormal times the majority of manila hemp imported into this country is transported from the Pacific coast ports, the warden of the state penitentiary of South Dakota testified, although a witness for respondent, the Illinois Central Railroad, had no knowledge of any such movements, that several small cargoes of manila hemp, in recent years, had been imported from Africa and Australia through the port of New Orleans. Under a tariff provision of the Illinois Central, domestic rates apply as import rates in the absence of specific import rates. Although the proposed increased rates are merely

"paper" increases, which respondent felt it was called upon to justify merely because they had been protested and their operation suspended by the Commission, the warden of the state penitentiary of South Dakota anticipates that there may be some traffic to which the increased rates would apply.

No testimony was submitted by any of the protestants to show that the increased rates are unreasonable or otherwise in violation of the act to regulate commerce, except that attention was directed to the fact that import and domestic rates for the transportation of sisal from New Orleans to St. Paul, for example, are normally 5½ cents per 100 pounds under the import and domestic rates from New Orleans to Sioux Falls. The distance from New Orleans to Sioux Falls, via the line of the Illinois Central Railroad, is 1,372 miles, exceeding the distance to St. Paul, via the lines of the Illinois Central and the Minneapolis & St. Louis railroads, by but 45 miles. However, the relation of rates as between Sioux Falls and St. Paul is not here involved; the increase to each is uniform.

The examiner recommends that the Commission find the increased domestic rates for the transportation of sisal, carloads, from New Orleans and Port Chalmette to the destination named, here proposed, have been justified.

ANDERSON, *Commissioner:*

No exceptions have been taken by the parties to the foregoing report proposed by the examiner, which was served upon them under rules of procedure providing for the filing of exceptions thereto within 20 days. Upon consideration of the record we approve the proposed conclusions and adopt that report as the report of the Commission. An order will be entered vacating the orders of suspension.

INVESTIGATION AND SUSPENSION DOCKET NO. 1110.

TOLEDO SWITCHING ABSORPTION.

Submitted March 26, 1918. Decided May 2, 1918.

1. A tariff provision that authorizes the absorption of foreign line charges for switching transit grain and grain products to and from elevators and mills at the transit points can not be interpreted as meaning that any part of the charges contemporaneously maintained for intracity switching between elevators and mills at the same point shall also be absorbed.
2. The tariff provision here under suspension, in the form that the respondent has agreed to modify it, is merely a more definite expression of the rule at present in force; and since it is not shown to be either unreasonable or unduly prejudicial, it should be permitted to become effective.

D. P. Connell for New York Central Railroad Company.
H. G. Wilson for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

Transit arrangements under which grain may be stored in elevators or milled at Toledo, Ohio, are generally maintained by the carriers which serve that point. Depending upon their location, the elevators and mills may be reached either directly by the road-haul carriers or indirectly through switching service by connecting lines.

In respect of transit grain and grain products forwarded outbound from Toledo by the New York Central Railroad Company, here respondent, it is the practice of that carrier to absorb not more than $6 a car of the switching charges to and from elevators and mills located on the tracks of other railroads in Toledo. One exception to this rule, irrelevant to the issue here, requires no discussion.

The tariffs of the respondent do not at present, nor have they in the past, expressly authorized the absorption of charges for intracity switching; meaning a local transfer in Toledo from one elevator or mill to another, which takes place as an independent transaction after the inbound transportation is completed and before the outbound transportation begins. To the contrary, the rules that govern the transit service definitely provide that "any charge for transportation of tonnage transferred from one transit house to another shall be in addition to the rate." Through alleged inadvertency, however, the respondent admits having absorbed a part of the Toledo intracity switching charges on some shipments which it transported

inbound to the east side iron elevator on its rails, and which subsequently were transferred from there to the mill of the Toledo Grain & Milling Company on the tracks of the Toledo, St. Louis & Western Railroad Company, hereinafter called the Clover Leaf. The charge for that intracity switching service is 20 cents a ton for the movement by the respondent from the east side iron elevator to its interchange track with the Clover Leaf plus $3 a car for the movement thence by the Clover Leaf to the mill of the Toledo Grain & Milling Company, or a total of $8 on a 25-ton load. Of this sum the part erroneously absorbed was the $3 charge of the Clover Leaf on traffic that ultimately moved outbound over the respondent's line.

Where both the inbound and outbound transportation is directly to and from the mill on Clover Leaf tracks, the respondent absorbs the Clover Leaf switching charge of $3 in both directions, or a total of $6. Where traffic brought into Toledo by carriers other than the respondent is switched by the respondent to the east side iron elevator, thence transferred in an intracity movement to the mill on the Clover Leaf tracks, and ultimately shipped outbound over the respondent's line, that carrier cancels its inbound switching charge of $3 to the east side iron elevator, and in addition absorbs the outbound switching charge of the Clover Leaf, making a total of $6. These absorptions are strictly in accordance with the terms of the respondent's tariff, and are not in question here. It has happened, however, that instead of canceling its own switching charge for the service from connecting lines into the east side iron elevator, the respondent at times has instead absorbed the Clover Leaf part of the intracity switching charge. But in no instance did the total absorptions exceed the $6 maximum authorized by the tariff.

Where the inbound transportation is over the line of the respondent to the east side iron elevator, thence an intracity switch to the mill on Clover Leaf tracks, and finally an outbound movement over the line of the respondent, the tariff of that carrier authorizes the absorption of only the outbound switching charge of the Clover Leaf, which amounts to $3. The physical service of the Clover Leaf is the same whether the movement is directly to the mill, or first to the east side elevator and thence to the mill. In character, however, it is different in the sense that the indirect movement is a part of the intracity service, while the direct movement is a part of the through transportation service. Independent of the errors already discussed, this explains why, in instances where intracity switching is involved, the respondent does not absorb the inbound switching charge of the Clover Leaf.

To remove further possibility of error the respondent, in the tariff schedules here under suspension, proposes to reframe its switching

absorption rules so as to make them more definite; and also to have them administered under police regulations similar to those that govern the transit rules. On the record it was agreed that certain objectionable changes would be modified. These require no discussion. There remains for consideration, however, the principal protest, which runs against the respondent's proposal to supplement its absorption rule with an explanatory note stating that the term "inbound switching," as it is used in the rule—

> * * * is the movement by switching carrier of the loaded car to an elevator or mill into the Toledo district and does not include the intradistrict movement from one elevator or mill to another.

Protest was made only by the Toledo Grain & Milling Company, which heretofore has benefited by the respondent's errors in absorbing a part of the intracity charges. Without seriously questioning the interpretation here placed upon the present absorption rules, the protestant takes the position that the charge of 20 cents a ton fully compensates the respondent for the use of a third car and the additional physical service in the intracity movement from the east side iron elevator to the interchange track with the Clover Leaf. On this premise it is further contended that since the inbound physical service of the Clover Leaf is the same whether the movement is directly to the protestant's mill or indirectly through the east side iron elevator, the respondent should absorb both the inbound and outbound Clover Leaf charge, or a total of $6, even though $3 of it may be part of the intracity charge. The failure to do this, it is said, will result in undue discrimination against that portion of the protestant's traffic that passes through the east side iron elevator. The inherent reasonableness of the intracity switching charge is not attacked.

The facts clearly show that the intracity switching, so far from being connected in any way with the through transportation, is a distinctly separate service for which a separate charge is made. Nevertheless, the protestant seeks to have the Clover Leaf part of that service regarded as incident to the through transportation. The thought seems to be that since the respondent has voluntarily agreed to absorb as much as $6 of connecting line switching charges where the switching service is incident to through transportation, it should, if such charges are less than $6, make up the deficiency by bearing a part of the charges assessed for intracity switching. The respondent, however, is not under obligation to absorb connecting line switching charges even where the switching service is incident to the through transportation. Because it voluntarily does so, and at the same time refuses to absorb any part of the charges
y switching, is not an unjust discrimination. Even if it
nination the respondent would be free to remove it

by the cancellation of its switching absorption rule; and in that event the protestant would still be required to pay not only the full intracity charge but also the Clover Leaf charge for the outbound switching movement from the mill.

The tariff provision here under suspension, in the form that the respondent has agreed to modify it, is merely a more definite expression of the rule at present in force; and since it is not shown to be either unreasonable or unduly prejudicial, there is no reason to condemn it. The modifications which the respondent has agreed to make, however, will require the cancellation of the schedules here under suspension and the reestablishment of a switching absorption rule not inconsistent with the conclusions herein reached. Any undercharges that may have resulted from the erroneous absorptions hereinbefore discussed should be collected.

ANDERSON, *Commissioner:*

The foregoing report, proposed by the examiner, was duly served upon the parties in accordance with the Rules of Practice. The facts there stated have not been questioned, nor has objection been raised to the suggested disposition of the issue. Upon the whole record we adopt the examiner's report as the report of the Commission. An order will therefore be entered requiring cancellation of the tariff provision here under suspension.

No. 9722.

KENTUCKY LUMBER COMPANY, INCORPORATED,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted September 24, 1917. Decided May 2, 1918.

Rates on gum lumber, in carloads, from Sulligent, Ala., to certain points in Michigan, Wisconsin, and Indiana not shown to have been unreasonable. Complainant not shown to have been damaged by alleged undue prejudice and complaint dismissed.

Ralph McCracken for complainant.

A. T. Sullivan for St. Louis-San Francisco Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant manufactures lumber at Lexington, Ky. By complaint filed April 18, 1917, it alleges that the charges collected on various carloads of gum lumber shipped from Sulligent, Ala., to certain destinations in Indiana, Michigan, and Wisconsin, between September 1, 1914, and July 1, 1915, inclusive, were unreasonable and unduly prejudicial. Reparation is asked. A claim to toll the statute of limitations was filed with us August 18, 1916, but as to many of the shipments the formal complaint was not filed within a reasonable time thereafter. The disposition herein made of the complaint renders a determination of the statutory question unnecessary. Rates are stated in cents per 100 pounds.

Generally the rates from Sulligent to these destinations were and are combinations on Thebes, Ill. Prior to September 1, 1914, the rate on lumber from Sulligent to Thebes was 11 cents. On that date it was increased to 12 cents. Effective July 1, 1915, the defendants reestablished the 11-cent rate on gum and cottonwood lumber, but on March 15, 1917, this rate was again increased to 12 cents. Complainant does not attack the present rates, the contention being that the rates charged were unduly prejudicial against Sulligent in favor of points in the Mississippi delta, including Greenville, Miss. Prior to the increase in the component from Sulligent to Thebes on September 1, 1914, the rates from Sulligent generally were from 2 to 3 cents higher than from Greenville to the same destinations, and the increase in the component from Sulligent to Thebes

increased this disparity. Through a readjustment of the rates from the Mississippi delta the present rates on lumber from that territory to these destinations are generally equal to or slightly higher than those from Sulligent.

For complainant it was testified that it established its mill at Sulligent in 1913 upon assurance from the St. Louis-San Francisco Railway Company, hereinafter called the Frisco, that the then existing rate relationship between Sulligent and the Mississippi delta would be continued; and that the average distance from the Mississippi delta to these destinations were approximately the same as from Sulligent, except that to those in southern and eastern Indiana the distances from Sulligent were greater.

The witness for the Frisco, the only defendant represented at the hearing, testified that the former 11-cent rate from Sulligent to Thebes contravened the fourth section in that it was lower than from intermediate points; that he caused the first increase in this rate to 12 cents, to obviate fourth section departures, without knowledge that there was a lumber mill at Sulligent and without intention of disrupting the then existing relationship between the rates from Sulligent and those from the Mississippi delta; and that the Frisco was willing that reparation be awarded. He denied that the rate charged was unreasonable or unduly prejudicial.

We find that the rates assailed are not shown to have been unreasonable. Any undue prejudice which may have existed has now been removed, and there is no proof of injury or damage to complainant by reason of the alleged discrimination. An order dismissing the complaint will be entered.

INVESTIGATION AND SUSPENSION DOCKET NO. 1114.

EXPRESS CHARGES ON EMPTY FISH CARS.

Submitted April 4, 1918. Decided May 7, 1918.

Proposed increased rate for the interstate movement of empty fish cars and withdrawal of free transportation of attendants accompanying empty fish cars found justified.

John M. Sternhagen for American Express Company.

Philip J. Gagen; Littleford, James, Ballard & Frost; Francis B. James; E. E. Williamson; Wayne P. Ellis; and *Ewing H. Scott* for protestant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, HALL, AND AITCHISON.

By schedules filed to take effect August 20, 1917, respondents proposed to eliminate free transportation of attendants with empty fish cars and, except the Wells Fargo & Company, to increase the rate for the interstate movement of empty fish cars from 10 cents to 25 cents per mile. Upon protest of the Sandusky Federated Commercial Club, of Sandusky, Ohio, the schedules were suspended until June 18, 1918.

The proposed schedules read as follows:

SECTION 5. Rates in this section apply upon fish, live (not including aquarium or breeding fish).

Rates in this section are conditioned upon the shipper furnishing the necessary cars at his own expense.

Upon request of the shipper the companies party hereto will undertake as far as practicable to procure cars from the railroad company, for which cars the railroad company will make a rental charge of $2 per day for 365 days of each year (except when cars are in shop for necessary repairs), payable monthly in advance, at the rate of $60.83 per month; *in addition thereto Wells Fargo & Company Express will assess a* charge of 10 cents per mile *and the other express companies, parties hereto, will assess a charge of 25 cents per mile* for the movement of the empty car, which empty movement will be covered by express waybill.

The above charges will be collected by the express company and paid over to the railroad company.

* * * * * * *

One male attendant will be carried free with each full carload.

EXCEPTION.—No attendant will be carried on cars transported over the lines of the Southern Express Company.

* * * * * * *

From stations in * * * Illinois, * * * Michigan, Minnesota, * * * Ohio, * * * Utah, * * * and Wisconsin, the charge on a

tank car of fish, live (not including aquarium or breeding fish), to * * * New York, N. Y., Philadelphia, Pa., * * * will be the charge on 12,000 pounds at the first-class rate in addition to the rental charge and mileage charge on the empty car as shown in second paragraph of this section.

* * * * * * *

The italicized portions of these schedules represent the only changes proposed, except the elimination of free transportation of attendants with empty cars, the present item providing, "one male attendant will be carried free with each carload, also with each empty car."

There are nine express or baggage cars devoted to the service of handling carloads of live fish on respondents' lines. Eight of these are owned by the New York Central Railroad and operated by the American Express Company, hereinafter termed the respondent, while the other car is owned by the Baltimore & Ohio Railroad and operated by Wells Fargo & Company. It is explained that respondent, by direction of the New York Central, was obliged to have the 25-cent rate published within a certain time during which the Baltimore & Ohio Railroad had not made demand upon Wells Fargo & Company for an increased rate for the movement of such empty cars. This demand was made a few days after the schedules under consideration were filed, and it is therefore explained that Wells Fargo & Company is not averse to participation in a rate on empty fish cars similar to that proposed by respondent.

The practice of shipping live fish in carloads was found practicable about five years ago, and since that time the cars in question have been used exclusively for that traffic. The fish are shipped principally from Sandusky and Port Clinton, Ohio, to New York, N. Y., and Philadelphia, Pa., but also frequently move from points in Michigan, Illinois, Minnesota, Wisconsin, and Iowa, distances ranging from about 500 miles to 1,600 miles. The cars used for this traffic are made with the best steel underframes, and are equipped by the shipper, at an expense of about $2,000 per car, with permanent tanks and mechanism for aerating the water in the tanks. The shipper contracts with respondent for the exclusive use of the cars for certain periods, which apparently continue for a whole season or more at a rental charge provided in respondent's tariff. Both the loaded and empty cars are moved in passenger or express train service on express waybills.

The position of respondent is that the schedules proposed are not proper tariff provisions, that they are not required to be published, and that the Commission had no authority to suspend them. Despite the fact that certain of the proposed provisions are nonessential to the legal establishment of a rate for the transportation of empty cars, the schedules offer a transportation service in interstate commerce

and name a definite rate for the service contemplated in substantial compliance with the requirements of the act.

Respondent's practice is to pay to the railroad the entire charge of 10 cents per mile for the movement of the empty cars. As respondent filed the proposed schedules at the instigation of the New York Central which demanded an increased charge for the movement of empty fish cars, representatives of the New York Central were invited to show the cost of the service to their company. A representative of the New York Central showed that the compensation received by his line for the year 1916 from both the loaded and empty movement of fish cars, including car rental, after deducting the amount equivalent to the fares of the attendants with the empty cars, resulted in average car-mile earnings of 12.7 cents and that the division under the proposed schedule would have resulted in car-mile earnings of 21.5 cents. The compensation received by the New York Central for the movement of loaded and empty fish cars is clearly not a proper measure of the rate on empty fish cars. Apparently the movement of the empty cars is not always back to the point of origin of the loaded car, and it is significant to note that the rate on empty fish cars applies from or to any points on the lines of the various express companies.

An exhibit of the New York Central shows that for the calendar year 1915 its car-mile earnings on all of its passenger equipment, which embraced about 3,000 passenger, baggage, express, mail, and milk cars, was 24.4 cents, and for 1916, 25.7 cents. It is further shown that the New York Central receives from the United States government 21 cents per mile for the return of empty mail cars and an additional terminal charge of $4.50 per car; that the New York Central's rate on empty baggage cars is 30 cents per mile, and that its rate on private passenger cars is 25 first-class fares, which usually is equivalent to 50 or 60 cents per car-mile; that the Canadian railroads have made a demand on the Board of Railroad Commissioners for Canada for a rate of 30 cents per mile for handling mail cars, loaded and empty, with a terminal charge of $4.50, or $8.50 for the round trip; and that the rates cited in comparison relate to a transportation service substantially equal and in many respects similar to that furnished in the transportation of empty fish cars. An empty fish car can not be used for a return load on account of the inside construction and fixtures, and not being available for other transportation purposes it is regarded by the carriers for transportation hauls as a loaded car. The New York Central showed that during 1916 the eight cars were on foreign lines 22.8 per cent of the time and that while they were on the New York Central they were

'er load an aggregate of 325 days during the year. The average

movement of each car, loaded and empty, during 1916 was 47,843 miles.

Protestant urges that the adequacy of the revenue derived from both the loaded and empty movements of the cars should be considered in determining the reasonableness of the proposed increase in the rate on empty fish cars. Protestant's witness computed from the exhibit of the New York Central respondent's total earnings for the calendar year of 1916 on the eight fish cars, both in empty and loaded movements, disregarding the question of divisions between the respondent and the New York Central, and without deducting amounts equivalent to the fares of the attendants with the empty cars, obtained average earnings of 20.9 cents per car-mile under the present rate. These earnings include not only the transportation of the car but also of an attendant. Protestant argues from the exhibits of the New York Central and the annual reports of that line, that the total earnings of respondent derived from the movement of the loaded and empty fish cars for the calendar year of 1916, disregarding divisions, would have been 28.7 cents per car-mile under the proposed schedules; that the loaded and empty movements of cars devoted exclusively to the milk traffic earned 16.3 cents per car-mile; baggage, mail, and express cars earned 19.2 cents per car-mile, and other cars in passenger service, 31.8 cents per car-mile. Protestant's witness used in determining the earnings on milk the total revenue derived from the milk traffic in carloads and less than carloads while using only the mileage of the cars devoted exclusively to milk traffic, and apparently the car-mile earnings on cars devoted exclusively to the milk traffic was less than 16.3 cents per car-mile. However, the volume of the milk traffic, while not shown definitely, far exceeds the movement of empty and loaded fish cars.

At present one male attendant is granted free transportation with each carload shipment of live fish, and respondent proposes to continue this practice, but proposes to discontinue the carrying of an attendant free with the empty car. Respondent suggests that section 1 of the act which permits free transportation of caretakers of live stock, poultry, milk, and fruit does not comprehend free transportation to caretakers of live fish. While the term "free" is used in reference to the transportation of the attendant, the transportation is not performed free but is included in the rate, and the term used is the equivalent of "without additional charge." Respondent urges that the ordinary passenger fare is reasonable for the transportation of persons accompanying empty cars. Respondent's general regulations with respect to attendants with live animals, live birds, live poultry, live fish, or live stock provide that such attendants must not be furnished with free return transportation.

Protestant states that respondent provides an express messenger in connection with less-than-carload shipments and with general carload shipments, while in the case of live fish the shipper is required to furnish his own messenger; that the empty movement is necessary to the loaded movement and therefore urges that respondent should furnish free transportation to an attendant as well with the empty movement as with the loaded movement of the car. Evidence was introduced by protestant tending to show the cost of conducting the live-fish industry, and comparing rates on live fish, in carloads, with the rates on live stock and also on dead fish, and other remote facts that have substantially no bearing on the issues presented.

It is suggested that the Commission should find that the proposed schedules have been justified, and that the order of suspension be vacated.

MEYER, *Commissioner:*

A report similar to the foregoing was proposed by the examiner and was served upon the parties and they both filed exceptions thereto. Protestant's exceptions relate to a failure of the examiner to make certain findings and to the conclusion as a matter of law. Respondent did not except to the conclusion of the examiner but alleged that certain findings of law were erroneous. We have carefully examined the record in the light of the exceptions and have corrected the proposed report accordingly. As thus corrected, the proposed report and conclusions of the examiner are adopted as those of the Commission, and an order will be entered accordingly.

No. 9459.

DELAWARE PUNCH COMPANY OF TEXAS
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted September 16, 1917. Decided May 2, 1918.

Rates on Delaware punch sirup, in carloads, from San Antonio, Tex., to Pacific coast terminals and points intermediate thereto not shown to have been unreasonable. Complaint dismissed.

J. M. Elder for complainant.

Gentry Waldo, H. M. Garwood, F. H. Wood, T. J. Norton, and *F. J. Wren* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant manufactures a colored acidulated sirup, known as Delaware punch sirup, at San Antonio, Tex. By complaint filed January 8, 1917, it alleges that the defendants' rates on Delaware punch sirup, in carloads and less than carloads, from San Antonio to California terminals and intermediate points, as shown in agent Countiss's tariff I. C. C. No. 1019, and to Globe, Phoenix, and Tucson, Ariz., were unreasonable. It asks reparation on shipments which moved within two years prior to the filing of the complaint and the establishment of reasonable rates. Rates are stated in amounts per 100 pounds.

Delaware punch sirup is used as a beverage after being diluted with water. It is made up of about 58 per cent sugar, 37 per cent water, and 5 per cent various characteristic elements. It is shipped in bulk in barrels, half barrels, and kegs, and in glass containers packed in boxes. The carload rates assailed were commodity rates of $1.50 to California terminals and intermediate points, $1.62 to Globe, and $1.22 to Phoenix and Tucson, applicable in connection with a minimum of 36,000 pounds on soda-fountain supplies.

Complainant did not show the amounts of the less-than-carload rates assailed. It appears that there were no commodity rates on Delaware punch sirup, in less than carloads, and that, following *Delaware Punch Company of Texas* v. *G., H. & S. A. Ry. Co.*, 49 I. C. C., 131,

it will be rated in the western classification third class in bulk in barrels and second class in other containers, in less than carloads. The second and third class rates from San Antonio are $2.42 and $2.05 to California terminals, $2.60 and $2.17 to Globe, and $2 and $1.68 to Phoenix and Tucson.

The principal basis for the attack upon the carload rates is a comparison with carload commodity rates in effect at the time of the hearing on "root beer sirup, in tin, boxed, minimum weight 40,000 pounds," from defined territories of 85 cents to California terminals, and from 85 cents to $1.06 to intermediate points. San Antonio is a group H point from which the rate was 85 cents to intermediate as well as to terminal points. On root beer sirup Phoenix and Tucson took the rates applicable to intermediate points, but the rate to Globe was not shown. It was testified that root beer sirup is analogous to Delaware punch sirup in that it is diluted with water and used as a beverage, and that the values are not greatly different. Some root beer sirup is shipped in concentrated form and is mixed with a simple sirup composed of sugar and water, the mixture being used as a beverage after the addition of water. The only points of origin of root beer sirup mentioned of record are Rochester, N. Y., and Philadelphia, Pa. Considerable evidence was introduced concerning the competition between root beer sirup and Delaware punch sirup. As there is no allegation of undue prejudice, this evidence will not be considered. Reference was also made to a rate of $1.10, in effect when the hearing was had, on grape juice, in carloads, from defined territories to California terminals.

With respect to the less-than-carload rates complainant relies solely on a comparison with less-than-carload commodity rates on "liquors, n. o. s., including vermouth, but not including champagne, in bulk in barrels or drums; fruit juice * * * and clarified lime juice, in bulk in barrels or drums, or in glass or stone, boxed," which at the time of the hearing, were $1.75 from defined territories to California terminals and from $1.75 to $2.27 to intermediate points. Root beer sirup in less than carloads moved at the same class rates as apply on Delaware punch sirup. Complainant contends that the rates assailed should not exceed those on root beer sirup, in carloads, and on liquors, etc., in less than carloads, from and to the same points.

Defendants testified that both the carload rates on root beer sirup and the less-than-carload rates on liquors, etc., cited by complainant, were the result of actual water competition and were regarded by them as unreasonably low. The following table shows the rates on Delaware punch sirup, in carloads, from San Antonio to San Francisco

and Los Angeles, Cal., and Phoenix, Tucson, and Globe, at the time of the hearing, and the rates sought, with distances and ton-mile earnings:

From San Antonio to—	Distance.	Rates at time of hearing.	Ton-mile revenue.	Rates sought.	Ton-mile revenue.
	Miles.		*Mills.*	*Cents.*	*Mills.*
San Francisco	1,907	$1.50	15.7	85	8.9
Los Angeles	1,422	1.50	20.9	85	11.9
Phoenix	1,055	1.22	23.1	85	16.1
Tucson	933	1.22	26.2	85	18.2
Globe	943	1.62	34.4	85	18.0

Since the hearing in this case we have decided *Transcontinental Commodity Rates*, 48 I. C. C., 79, which has resulted in a complete revision and readjustment of commodity rates from defined territories to Pacific coast and intermediate points. The present record affords no basis for passing on the rates assailed for the present or the future, and we will therefore express no opinion with respect thereto.

We find that the rates assailed are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9694.

BUCKEYE COTTON OIL COMPANY
v.
GULF, MOBILE & NORTHERN RAILWAY COMPANY ET AL.

Submitted November 23, 1917. Decided May 9, 1918.

1. Rates on blackstrap molasses from Mobile, Ala., to Memphis, Tenn., found to be unlawful.
2. Defendants authorized to publish and maintain rates on blackstrap molasses, in carloads, from Mobile to Memphis dependent upon declared or released value, under the provisions of the Cummins amendment of August 9, 1916.

R. B. Buchanan and *Wm. H. McGuffey* for complainant.

R. Walton Moore, *W. A. Northcutt*, and *Arthur E. Haid* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner:*

In the complaint here considered it is alleged that the rates charged by defendants for the transportation of blackstrap molasses, in carloads, shipped by complainant from Mobile, Ala., to Memphis, Tenn., are unreasonable and unduly prejudicial to complainant and preferential of shippers of like traffic from Mobile to St. Louis, Mo., in violation of sections 1 and 3 of the act. The Commission is asked to prescribe just and reasonable rates.

This case was submitted upon an agreed statement of facts. Defendants publish a carload rate of 15 cents per 100 pounds, Mobile to St. Louis, on blackstrap molasses in tank cars "when declared value (as stated in shipping order) is 8 cents or less per gallon," and a rate of 17 cents when declared value is in excess of 8 cents per gallon or when value is not declared. Similarly, the rates to Memphis are 10 and 12 cents. The rates to St. Louis were established as a result of the Commission's decision in *Louisiana Sugar Planters' Asso.* v. *I. C. R. R. Co.*, 31 I. C. C., 311. On November 4, 1916, the Commission ruled informally that the rates authorized in that decision were deemed to be rates which were expressly authorized by the Commission within the meaning of the amendment of August 9, 1916, to the Cummins amendment, but that its decision could not be construed as authorizing the same

application of other released rates to points not considered therein. To that view we adhere. See *Silk Asso. of America* v. *P. R. R. Co.*, 50 I. C. C., 50, this day decided. As a result of the *Louisiana Sugar Planters' Association Case*, *supra*, shippers to St. Louis have been able to declare a value of 8 cents per gallon and secure the lower rate, although limiting the carrier's liability, while shippers of like traffic to Memphis have been required to state the actual value and pay the higher rate on shipments worth more than 8 cents per gallon. It is stated that in publishing the rates to Memphis the carriers intended to place shippers at that point on equality with those at St. Louis in so far as their ability to ship under released rates was concerned.

We are asked only to approve the existing rates on blackstrap from Mobile to Memphis so that they may be interpreted and used in the same manner as are the rates to St. Louis. The Cummins amendment requires rates on domestic traffic based on value to be expressly authorized by us before they can be regarded lawful. These rates were not so authorized and are therefore unlawful. *Williams Co.* v. *H. & N. Y. T. Co.*, 48 I. C. C., 269.

For the future defendants are hereby authorized to establish upon one day's notice carload rates of 10 cents per 100 pounds on blackstrap molasses from Mobile to Memphis when declared value is 8 cents or less per gallon, and 12 cents per 100 pounds when value is in excess of 8 cents per gallon.

No. 7573.

F. S. ROYSTER GUANO COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted December 30, 1916. Decided April 29, 1918.

1. Reasonable distance rates and carload minimum prescribed as maxima for transportation of commercial fertilizer from Norfolk, Va., to points in North Carolina on defendants' lines.
2. In maintaining and applying to carload shipments of commercial fertilizer from Norfolk to points on their lines in North Carolina higher rates than to similar shipments for like distances between points in North Carolina, defendants are subjecting the city of Norfolk, manufacturers of commercial fertilizer at that point, and shippers thereof from that city into North Carolina to undue and unreasonable prejudice and disadvantage, and giving to localities in North Carolina where commercial fertilizer is manufactured, the manufacturers at such points, and shippers thereof between points in that state, an undue and unreasonable preference and advantage in violation of section 3 of the act to regulate commerce.

C. J. Collins for complainant.

E. L. Travis, *Cameron Morrison*, and *George G. Pell* for Corporation Commission of North Carolina, intervener.

R. Walton Moore, *M. P. Callaway*, *C. D. Drayton*, and *E. H. Hart* for Atlantic Coast Line Railroad Company, Southern Railway Company, and Seaboard Air Line Railway.

C. M. Bain for Norfolk Southern Railroad Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

CLARK, *Commissioner:*

Our original report in this proceeding is *Royster Guano Co.* v. *A. C. L. R. R. Co.*, 38 I. C. C., 190, decided February 18, 1916. We there prescribed distance rates to be observed as maxima for the transportation of commercial fertilizer in carloads from Norfolk, Va., to points in North Carolina on the lines of the four defendants, and found that in maintaining and applying to carload shipments of commercial fertilizer from Norfolk to points in North Carolina higher rates than to similar shipments for like distances between points in North Carolina, defendants were subjecting complainant, its traffic, and the city of Norfolk to undue and unreasonable prejudice and disadvantage, and giving to shippers between points in North Carolina, their traffic, and localities in that state where com-

mercial fertilizer is manufactured an undue and unreasonable preference and advantage, in violation of section 3 of the act. Reference may be had to that report for a full statement of the facts.

By order of March 29, 1916, we amended our report and order of February 18, 1916, by changing the carload minimum found reasonable from 20,000 pounds to 24,000 pounds. On April 13, 1916, in accordance with the expressed desire of the Corporation Commission of North Carolina, the amended order was vacated and the proceeding reopened for further hearing, and by order of April 25, 1916, that commission, hereinafter called the intervener, was permitted to intervene.

After further hearing briefs were filed, oral argument was had, and the proceeding is now before us for decision on the entire record, including the evidence introduced in No. 6206, a somewhat similar complaint brought by complainant against the Atlantic Coast Line Railroad and the Seaboard Air Line Railway.

It was stated on behalf of the intervener that its intervention is "for the sole purpose of seeing that the consumers of fertilizers in North Carolina are not required to pay more than a reasonable rate on this commodity." The reasons for the reduction in the North Carolina intrastate rates effective October 13, 1914, and the position of the intervener, as developed on brief, are summarized in the following paragraphs lettered (*a*), (*b*), and (*c*):

(*a*) Fertilizer rates within North Carolina had been in effect without material change since 1891; there had been great increase in the volume of traffic, including fertilizer, and in the gross and net earnings of the carriers operating in North Carolina; lower rates on fertilizer were maintained by these and other carriers in other southern states under no better transportation conditions; the Farmers' Union of North Carolina had made application for reduction in the intrastate rates on fertilizer; the reduced rates were promulgated as stated in our report of February 18, 1916; and were made effective two days before the effective date of our order of July 1, 1914, through a mere coincidence.

(*b*) The differences between the North Carolina rates and those prescribed by us for like distances from Norfolk into North Carolina, hereinafter called the Royster scale, do not result in undue prejudice; our authority to remove undue prejudice caused by the relation between intrastate and interstate rates should be exercised only where the disadvantage to interstate commerce is real and substantial; a port having distinct advantages in securing raw materials is not subjected to undue prejudice or disadvantage by such differences as are here present; we should not "undertake to correct every mere disparity between interstate and intrastate rates, even though they

may in some cases think such disparity ought not to exist"; and if we find undue prejudice in this case, we should remove it by reducing the Royster scale to the level of the North Carolina rates.

(*c*) These are reasonable; they yield more revenue per ton per mile than defendants' rates on grain and lumber, more than the average of all traffic on defendants' lines, and are higher than the scales in any of the southern states except South Carolina; railroads have acquiesced in the maintenance of these scales for a number of years, and have in some instances voluntarily made corresponding interstate rates; the volume of traffic and gross and net earnings of defendants are greater per mile of road in North Carolina than in any southern state except Virginia; in three cases we have prescribed rates on fertilizer which averaged lower than the North Carolina rates for like distances; and as the carriers have signified their intention of attempting to adopt on interstate and intrastate traffic throughout the south whatever scale is prescribed here, great care should be exercised in reaching a decision. Finally, it is said that while in general rates have been higher in the southeast than in other sections of the country, the development of that territory and the growth in the volume of traffic, particularly in fertilizer, justify rates that approach the level of rates in other territories.

Much of the evidence submitted in the form of rate comparisons and other data is substantially similar to that already of record. In addition evidence was introduced by the intervener substantiating the statements that the reduction of the North Carolina rates after the issuance of our report of July 1, 1914, was merely a coincidence, and that the Norfolk manufacturer of fertilizer pays less for raw materials than his competitor in North Carolina pays, because of lower inbound rates to Norfolk.

In support of its contention that there is no undue prejudice to Norfolk the intervener placed upon the stand, among others, two witnesses who represented companies engaged in the manufacture of fertilizer at Norfolk and other points in the south. Both stated that in their opinion there was no undue prejudice to Norfolk. The first gave as his reasons that Norfolk has lower freight rates on the raw materials, that capital invested in the plants in the interior of North Carolina is entitled to consideration, and that the rates from Norfolk have always been higher and should therefore remain so. The second expressed his view that rates from ports should be higher for like distances than from interior points because of the advantages possessed by ports. The companies represented by these witnesses, like complainant, operate factories in North Carolina as well as at Norfolk. One has over 40 fertilizer factories in the south, including plants at Wilmington, Wadesboro, Charlotte, Winston, Durham,

mercial fertilizer is manufactured an undue and unreasonable preference and advantage, in violation of section 3 of the act. Reference may be had to that report for a full statement of the facts.

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After further hearing briefs were filed, oral argument was had, and the proceeding is now before us for decision on the entire record, including the evidence introduced in No. 6206, a somewhat similar complaint brought by complainant against the Atlantic Coast Line Railroad and the Seaboard Air Line Railway.

It was stated on behalf of the intervener that its intervention is "for the sole purpose of seeing that the consumers of fertilizers in North Carolina are not required to pay more than a reasonable rate on this commodity." The reasons for the reduction in the North Carolina intrastate rates effective October 13, 1914, and the position of the intervener, as developed on brief, are summarized in the following paragraphs lettered (*a*), (*b*), and (*c*):

(*a*) Fertilizer rates within North Carolina had been in effect without material change since 1891; there had been great increase in the volume of traffic, including fertilizer, and in the gross and net earnings of the carriers operating in North Carolina; lower rates on fertilizer were maintained by these and other carriers in other southern states under no better transportation conditions; the Farmers' Union of North Carolina had made application for reduction in the intrastate rates on fertilizer; the reduced rates were promulgated as stated in our report of February 18, 1916; and were made effective two days before the effective date of our order of July 1, 1914, through a mere coincidence.

(*b*) The differences between the North Carolina rates and those prescribed by us for like distances from Norfolk into North Carolina, hereinafter called the Royster scale, do not result in undue prejudice; our authority to remove undue prejudice caused by the relation between intrastate and interstate rates should be exercised only where the disadvantage to interstate commerce is real and substantial; a port having distinct advantages in securing raw materials is not subjected to undue prejudice or disadvantage by such differences as are here present; we should not "undertake to correct every mere disparity between interstate and intrastate rates, even though they

pared with Wilmington, in absorbing the switching charges of the Norfolk & Portsmouth Belt Line Railroad where factories are on that line. Evidence was introduced to offset this showing that an additional switching haul was required from some points taking the Wilmington rates. The line of the Seaboard Air Line from Wilmington to Rutherfordton, N. C., was formerly known as the Carolina Central Railroad Company, and prior to the establishment of the North Carolina scale had rates on fertilizer on a basis about 30 per cent above that obtaining on the main line of the Seaboard Air Line. This evidence was presented to us in No. 6206. The Norfolk & Portsmouth Belt Line Railroad, referred to above, was organized by the railroads serving Norfolk, including the four defendants, for convenient and economical handling of the terminal situation. In *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C., 455, 460, we found "that the belt line is a part of the line of each of the owning carriers for terminal purposes."

Their witnesses testified that the intrastate scales in the southern states are not voluntarily maintained by them and are unreasonably low. They say that repeated and ineffectual attempts have been made to have these rates increased to what they consider a fair basis. Where interstate rates in those states have been reduced to the level of the state rates it has been because the existence of the latter rendered it impossible to maintain interstate rates on a higher basis. The history of fertilizer rates in the south was stated substantially as follows: Georgia was the first southern state to create a railroad commission. In 1880, immediately after its organization, that commission made schedules of class and commodity rates, among the latter being a scale of fertilizer rates. In its second annual report it stated that the reductions amounted to millions of dollars, and were in some instances 75 per cent of the former rates. As an example of the reductions on fertilizer, the rate of $2 per ton for distances of 50 miles and less on the Savannah, Florida & Western Railway, now a part of the Atlantic Coast Line Railroad, was changed so as to begin with a rate of $1 per ton and increase gradually to $1.60 per ton at 50 miles. That road unsuccessfully contested the order in the courts and, in 1881, put the rates into effect. In 1882 the Georgia commission permitted an increase of about 20 per cent in rates on fertilizer, but in 1884 reduced the rates not only below those established in 1882, but below those prescribed in 1880. Further material reductions were made in 1890 and again in 1897, the resulting rates being now in effect.

In 1897 the Georgia commission referred to the fact that it had during that year reduced the rates on a number of articles, includ-

ing fertilizer, and that there were some other articles upon which it had declined to grant reductions "as some lines are now failing to pay their operating expenses and fixed charges under the rates at present allowed, while a large majority of them barely earn sufficient revenue to pay cost of operation and fixed charges. Under the present conditions any considerable reduction of the income of the roads would place many of them in circumstances likely to terminate in receiverships."

Later, the adoption of the same basis of rates as existed in Georgia was made a political issue in Alabama and the legislature of the latter established rates on 110 commodities, including fertilizer, on the same basis as in Georgia.

Shortly afterwards the South Carolina commission established a scale of rates on fertilizer approximately the same as the Alabama scale. Later, in 1908, it established the present South Carolina scale.

It is shown for the Atlantic Coast Line, Seaboard Air Line, and the Southern that while their operating revenues per mile of road in 1915 exceeded those for 1901 by 90 per cent, the corresponding increase in operating expenses for 1915 was 104 per cent. The Norfolk Southern is permitted by the intervener to charge rates 10 per cent in excess of those for the other roads.

Complainant introduced no evidence on rehearing. During the hearing counsel for complainant said:

> I wish again to state the record clearly shows complainants have already contended that the present North Carolina intrastate mileage scale is not below fertilizer rates for like distances in other parts of the south, and as complainant desires to secure the establishment of an interstate mileage scale of rates on commercial fertilizers applicable from Norfolk, Va., to points in the state of North Carolina that does not exceed the present North Carolina intrastate mileage scale of rates, and there is a possibility that this proceeding may not attain that end, I now move to be allowed to dismiss this case.

This motion was supported by the intervener and opposed by defendants.

Section 13 of the act to regulate commerce reads in part as follows:

> No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

In *Jewelers' Protective Union* v. *P. R. R. Co.*, 36 I. C. C., 71, we said, at page 75:

> The interests of the public can not go by default in any proceeding before the Commission. They must be considered as fully as those of the parties. Unlike the decision of a court, which ordinarily is conclusive only of the rights of the interested parties, a report and order of the Commission prescribing rates, regulations, or practices for the future must affect many who are not directly represented before it.

And in *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 48 I. C. C., 312, we said, at page 367:

Here we have presented the public aspect of the question. That is, while, of course, the rights of investors, as of all other classes of the public, are to be protected, the essential matters to be decided are, What will be just and reasonable rates for the future, taking into consideration the conditions under which the service is performed and the interests of the entire public, including consumers, shippers, and carriers?

"The outlook of the Commission * * * must be as comprehensive as the interest of the whole country. If the problems which are presented to it, therefore, are complex and difficult, the means of solving them are as great and adequate as can be provided. *Interstate Comm. Com.* v. *Chi., R. I. & Pac. Ry.*, 218 U. S., 88, 103."

In speaking of a somewhat similar situation the Supreme Court said in *Cincinnati &c. Ry. Co.* v. *Inter. Com. Com'n.*, 206 U. S., 142, at page 149:

We think the Commission in making an investigation on the complaint filed by the Procter & Gamble Company had the power, in the public interest, disembarrassed by any supposed admissions contained in the statement of complaint, to consider the whole subject and the operation of the new classification in the entire territory, as also how far its going into effect would be just and reasonable, would create preferences, or engender discriminations; in other words, its conformity to the requirements of the act to regulate commerce.

At the time this motion was made reports had been rendered in this proceeding and the related case, No. 6206. These reports and the orders entered in connection therewith affected not alone the complainant, but many others not represented at the hearing. In our former report, February 18, 1916, we found that defendants were subjecting not only complainant, but "the city of Norfolk," to undue and unreasonable prejudice and disadvantage. A complainant before us can not, as a matter of right, withdraw his complaint. The undesirable consequences of permitting a complainant to terminate a proceeding whenever in his opinion his interests would thus be better served than by having it proceed to a conclusion are obvious, and require no exposition.

By order of October 2, 1916, the motion was denied.

In *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 41 I. C. C., 83, we said, at page 118:

Interveners sought to introduce evidence with reference to the inbound rates to Shreveport from certain producing territory and to contrast these rates with inbound rates to Texas points, for the purpose of showing that Shreveport had an advantage on inbound rates, and for that reason a discrimination against Shreveport and its shippers on outbound rates can not be unlawful. In our original report in No. 3918, *supra*, we had occasion to say, respecting this same contention:

"It is not the function of a railroad to equalize the commercial advantages of cities. If Shreveport is so situated by reason of her position on the Red River and her proximity to the Mississippi that the railroads serving her are justified in extending to her inbound rates which are lower than those extended

to Dallas and other cities in Texas, this is her advantage of which she may take full benefit. The carriers may not say that they will absorb in the outbound rates such advantages as Shreveport has upon her inbound rates."

The proposition that Shreveport has a right to claim the same treatment with respect to rates to and from Texas as is accorded to towns in Texas 25, 50, or 100 miles west of Shreveport, distance and respective transportation conditions considered, regardless of the inbound rates, is so self-evident as to require no discussion. We are dealing here with outbound rates, and the reasonableness of such rates does not in any wise depend upon whether the articles taking those rates were produced at the points of shipment or came to those points by wagon, boat, railroad, or otherwise.

A manufacturer of fertilizer at Norfolk is entitled to reasonable and nondiscriminatory rates into North Carolina. The fact that shippers having plants in North Carolina as well as at Norfolk are able to a great extent to neutralize any undue prejudice against Norfolk by supplying the demand from their North Carolina plants does not help a shipper having no plant in that state or remove the undue prejudice against Norfolk.

It seems fairly clear from the record that the level of the interstate rates in the southeast is influenced by that of the intrastate rates. There is a large production of fertilizer at Norfolk, about 85 per cent of which is shipped into North Carolina. There are no transportation conditions justifying higher rates, distance considered, from Norfolk into North Carolina than between points in North Carolina.

The required minimum carload weight is necessarily a part of the rate. It determines the minimum carload charge and enters directly into the determination of whether or not that charge is reasonable. At the original hearing in May, 1915, complainant's witness testified that "our average car loading out of Norfolk for a period of a year was 17.02 tons to the car." Exhibits introduced by complainant are based upon that car loading and it is used in numerous of the exhibits in computing revenue per car-mile.

At the further hearing in July, 1916, witness for the interveners testified: "I understand that the average loading in North Carolina is about 17 tons per car." Even with an average loading of 17 tons per car, neither the available weight capacity nor the cubical capacity or space for available loading of a standard car is fully utilized. The maximum weight capacity of a standard 36-foot car is 30 tons, and it appears that it is possible to load such a car with fertilizer to its weight-carrying capacity.

Witness for the intervener was asked by the examiner: "As a practical matter, is it any advantage to the manufacturers to have a 24,000-pound minimum over the 30,000-pound minimum." He replied:

Not in the water shipping season. At the beginning, at the opening of the season, probably not so much at the opening of the season as at the close of the

season, some one may want to finish out the end of the year and he don't want to run in a 15-ton car if he can get a 10 or 12 ton car. He may have enough to just consume a 10 or a 12 ton car, but might have to carry over a little. I think it is more sentimental than otherwise. We have felt that the 15-ton minimum was not an unreasonable restriction and in our own loadings we go even beyond that whenever it is possible. We are anxious to have that car do the best service we can get out of it because to-morrow we may not have a car.

We find that 30,000 pounds is a reasonable carload minimum.

One means of testing the reasonableness of rates is to compare them with rates on the same or similar commodities in the same territory and under circumstances and conditions that are substantially similar or that obviously can not be substantially dissimilar. By reference to the following table it will be seen that although the carload minimum used with the North Carolina scale is low, the rates per ton are as a whole higher than are the rates applied in Virginia, Georgia, Alabama, Mississippi, or Florida and higher than the voluntarily established scale of the Louisville & Nashville road. The rates per ton in South Carolina are somewhat higher than in North Carolina for distances up to and including 250 miles, but the carload minimum in South Carolina is only 20,000 pounds and the South Carolina rates, instead of progressing with distance as do the North Carolina rates, are blanketed for distances beyond 220 miles.

Statement of fertilizer rates per ton 2,000 pounds.

Miles.	Royster scale, C. L. minimum, 24,000.	North Carolina scale, C. L. minimum, 24,000.[1]	Virginia scale, C. L. minimum, 30,000.	South Carolina scale, C. L. minimum, 20,000.	Georgia scale, C. L. minimum, 30,000.	Alabama scale, C. L. minimum, 30,000.	Mississippi scale, C. L. minimum, 30,000.	Florida scale, C. L. minimum, 30,000.	L. & N. scale, C. L. minimum, 30,000.
35	$1.50	$1.15	$1.00	$1.15	$0.95	$0.95	$0.75	$1.30	$1.20
40	1.50	1.20	1.10	1.25	.99	.99	.75	1.30	1.20
45	1.50	1.25	1.20	1.30	1.04	1.04	.75	1.40	1.40
50	1.50	1.30	1.20	1.35	1.08	1.08	.75	1.40	1.40
55	1.55	1.35	1.30	1.40	1.13	1.13	.75	1.50	1.40
60	1.60	1.40	1.30	1.45	1.17	1.17	.75	1.50	1.40
65	1.65	1.45	1.40	1.50	1.22	1.22	.75	1.60	1.40
70	1.70	1.50	1.40	1.55	1.26	1.26	.75	1.60	1.60
75	1.75	1.55	1.45	1.60	1.31	1.31	.80	1.70	1.60
80	1.80	1.60	1.45	1.65	1.35	1.35	.80	1.70	1.60
85	1.85	1.65	1.55	1.70	1.40	1.40	.90	1.75	1.60
90	1.90	1.70	1.55	1.75	1.44	1.44	.90	1.75	1.80
95	1.95	1.75	1.65	1.80	1.49	1.49	1.00	1.80	1.80
100	2.00	1.80	1.65	1.85	1.53	1.53	1.00	1.80	1.80
110	2.10	1.85	1.70	1.95	1.62	1.62	1.10	1.90	1.80
120	2.20	1.90	1.75	2.05	1.71	1.71	1.20	1.95	1.80
130	2.25	1.95	1.80	2.15	1.80	1.80	1.30	2.00	1.80
140	2.30	2.00	1.85	2.25	1.89	1.89	1.40	2.05	1.80
150	2.35	2.10	1.90	2.35	1.98	1.98	1.50	2.10	1.80
160	2.40	2.20	1.95	2.40	2.03	2.03	1.60	2.15	1.80
170	2.45	2.25	2.00	2.45	2.07	2.07	1.70	2.20	1.80
180	2.50	2.30	2.05	2.50	2.12	2.12	1.80	2.21	1.80
190	2.55	2.35	2.10	2.55	2.16	2.16	1.90	2.22	2.00
200	2.60	2.40	2.15	2.60	2.21	2.21	2.00	2.23	2.00
210	2.65	2.45	2.20	2.65	2.25	2.25	2.10	2.24	2.20
220	2.70	2.50	2.20	2.70	2.30	2.30	2.20	2.25	2.20
230	2.75	2.55	2.30	2.75	2.39	2.39	2.30	2.26	2.40
240	2.80	2.60	2.40	2.75	2.39	2.39	2.40	2.27	2.40
250	2.85	2.65	2.50	2.75	2.48	2.48	2.50	2.28	2.40
275	2.95	2.80	2.80	2.75	2.57	2.57	2.60	2.31	2.50
300	3.05	2.90	2.90	2.75	2.70	2.70	2.80	2.33	2.50
325	3.15	3.10	3.10	2.75	2.97	2.97	.....	2.36	2.60
350	3.25	3.20	3.20	2.75	3.15	3.15	.....	2.38	2.70

[1] One cent per 100 pounds is added "for joint hauls over two or more independently controlled railroads under the management of companies operating 75 or more miles of railroad within the state."

As there are but four defendants and the line of each reaches Norfolk, it is possible to have a one-line haul to any destination affected. In some instances this would result in an unnecessarily circuitous movement and carriage over the lines of two or more roads would result in a material saving in distance and in economy of operation. Somewhat higher rates for hauls over routes composed of two or more lines not under a common management and control than for hauls over one line or over two or more lines under a common management and control are reasonable.

We are of opinion and find that the rates of defendants for the transportation of commercial fertilizer from Norfolk to points on their lines in North Carolina are unjust and unreasonable to the extent that they exceed those hereinafter prescribed as maxima; and that for the future rates for such transportation of commercial fertilizer in carloads, subject to a carload minimum of 30,000 pounds, should not exceed the following rates per ton of 2,000 pounds, which we find to be just and reasonable for application to hauls over one line of railway or over two or more lines that are under the same management or control:

Distances, in miles.	Rates.[1]	Distances, in miles.	Rates.[1]
35 and over 30	$1.15	210 and over 200	$2.45
40 and over 35	1.20	220 and over 210	2.50
45 and over 40	1.25	230 and over 220	2.55
50 and over 45	1.30	240 and over 230	2.60
55 and over 50	1.35	250 and over 240	2.65
60 and over 55	1.40	260 and over 250	2.70
65 and over 60	1.45	270 and over 260	2.75
70 and over 65	1.50	280 and over 270	2.80
75 and over 70	1.55	300 and over 280	2.90
80 and over 75	1.60	320 and over 300	3.00
85 and over 80	1.65	340 and over 320	3.10
90 and over 85	1.70	360 and over 340	3.20
95 and over 90	1.75	380 and over 360	3.30
100 and over 95	1.80	400 and over 380	3.40
110 and over 100	1.85	420 and over 400	3.50
120 and over 110	1.90	440 and over 420	3.60
130 and over 120	1.95	460 and over 440	3.70
140 and over 130	2.00	480 and over 460	3.80
150 and over 140	2.10	500 and over 480	3.90
160 and over 150	2.20	525 and over 500	4.00
170 and over 160	2.25	550 and over 525	4.10
180 and over 170	2.30	575 and over 550	4.20
190 and over 180	2.35	600 and over 575	4.30
200 and over 190	2.40		

[1] For hauls over two or more lines of railway that are not under the same management or control 20 cents per ton may be added to these rates.

We are further of opinion and find that in maintaining and applying to carload shipments of commercial fertilizer from Norfolk to points on their lines in North Carolina higher rates than to like shipments for like distances between points in North Carolina, defendants are subjecting the city of Norfolk, manufacturers of com-

mercial fertilizer at that point, and shippers thereof from that city into North Carolina to undue and unreasonable prejudice and disadvantage, and giving to localities in North Carolina where commercial fertilizer is manufactured, the manufacturers at such points, and shippers thereof between points in that state, an undue and unreasonable preference and advantage in violation of section 3 of the act. Defendants will be required to cease and desist from maintaining and applying any higher rates or carload minimum to the transportation of commercial fertilizer in carloads from Norfolk to points in North Carolina than they contemporaneously maintain and apply to the transportation of like property for like distances within North Carolina.

An order will be entered giving effect to the foregoing conclusions.

HALL, *Commissioner*, dissenting in part:

I concur in the majority report except as to the scale of maximum interstate rates prescribed. This is reduced from the basis twice found reasonable by us on records which are incorporated in the present record, and which in my judgment are fortified thereby. It will reduce interstate rates from Norfolk to North Carolina stations, which for several years have been maintained with our approval by three of the four defendants.

If reasonable in 1914 and 1915, when the former records were made, or in 1914 and 1916, when our former findings were announced, they can hardly have become unreasonable during the intervening period of mounting costs. The majority report attaches significance to a comparison with state-made scales in the south, and also to the declared purpose of the carriers to seek application throughout the south of whatever scale is prescribed here. It attaches less significance to the genesis of those state-made scales, the rivalry between states which contributed thereto, and the higher rates prevailing in such states as New Jersey, Pennsylvania, and Maryland, where the density of traffic in fertilizer is about as great and of all traffic vastly greater.

The following table shows comparisons for representative distances between the North Carolina intrastate scale in effect from 1891 to 1914, the Royster interstate scale, effective since 1914, the scale prescribed by the North Carolina legislature in 1913, which never became effective, and the so-called Justice scale, now in effect within North Carolina:

Miles.	Old North Carolina scale.	Royster scale.	North Carolina legislature's scale.	Justice scale.
35	$1.30	$1.50	$0.90	$1.15
50	1.40	1.50	1.10	1.30
60	1.50	1.60	1.20	1.40
80	1.70	1.80	1.40	1.60
100	1.90	2.00	1.60	1.75
120	2.10	2.20	1.80	1.90
140	2.30	2.30	2.00	2.00
160	2.50	2.40	2.20	2.20
180	2.60	2.50	2.35	2.30
200	2.70	2.60	2.55	2.40
220	2.80	2.70	2.65	2.50
250	2.95	2.85	2.80	2.65
275	3.10	2.95	2.95	2.80
300	3.20	3.05	3.00	2.90
325	3.35	3.15	3.10	3.10
350	3.45	3.25	3.20	3.20

In *Meridian Fertilizer Factory* v. *A. & S. Ry. Co.*, 33 I. C. C., 160, specific rates from Shreveport, La., to points in Texas materially higher in many instances than those for like distances under the Royster scale were held not unreasonable. Specific rates from Blacksburg, S. C., to stations in North Carolina considerably higher than for like distances under the Royster scale were attacked as unreasonable in *Virginia Carolina Chemical Co.* v. *S. Ry. Co.*, docket No. 4009, unreported, and were not found unreasonable.

The intention of the carriers to carry our findings here beyond the confines of the issues now before us should not tinge our conclusions upon those issues. The other issues can be dealt with when they arise. It is no reflection upon the painstaking and conscientious way in which the Justice scale was worked out to say that it does not fit present operating conditions in the territory served with sufficient adequacy to warrant its adoption as maximum standard for interstate rates of the four defendants on shipments from Norfolk.

As to one of the defendants, the Norfolk Southern, that inadequacy has been recognized by intervener in the grant of permission to charge rates 10 per cent higher. No such exception is made here, and the Justice scale is adopted, including the unexplained "hump" in rates for distances between 140 and 160 miles, which progress at the rate of 1 cent per mile, although with that exception the rates for distances from 100 miles to 500 miles progress at the rate of one-half cent per mile in 10-mile steps up to 280 miles, and then in 20-mile steps up to 500 miles.

With all deference to the views of the majority, I am of opinion, upon the facts of record in this case, that the following scale should be substituted for that prescribed in the majority report:

Distances in miles.	Rate.	Distances in miles.	Rate.
35 and over 30	$1.35	180 and over 170	$2.50
40 and over 35	1.40	190 and over 180	2.55
45 and over 40	1.45	200 and over 190	2.60
50 and over 45	1.50	210 and over 200	2.65
55 and over 50	1.55	220 and over 210	2.70
60 and over 55	1.60	230 and over 220	2.75
65 and over 60	1.65	240 and over 230	2.80
70 and over 65	1.70	250 and over 240	2.85
75 and over 70	1.75	275 and over 250	2.95
80 and over 75	1.80	300 and over 275	3.05
85 and over 80	1.85	325 and over 300	3.15
90 and over 85	1.90	350 and over 325	3.25
95 and over 90	1.95	375 and over 350	3.35
100 and over 95	2.00	400 and over 375	3.45
110 and over 100	2.10	430 and over 400	3.55
120 and over 110	2.20	460 and over 430	3.65
130 and over 120	2.25	490 and over 460	3.75
140 and over 130	2.30	520 and over 490	3.85
150 and over 140	2.35	550 and over 520	3.95
160 and over 150	2.40	580 and over 550	4.05
170 and over 160	2.45		

WOOLLEY and ANDERSON, *Commissioners*, did not participate in the disposition of this case.

50 I. C. C.

No. 9819.

JACOB E. DECKER & SONS

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted March 4, 1918. Decided May 9, 1918.

Proposed application of higher rates on salted hog meats in packages than are applied to the same commodities in bulk found unreasonable and not in accord with tariff provisions.

Walter E. McCornack for complainant.

George Patterson Boyle for intervener.

D. P. Connell for eastern lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

Complainant is a corporation engaged in the meat packing business at Mason City, Iowa. Its complaint, filed August 6, 1917, charges that the rates sought to be applied by defendants on complainant's shipments of so-called "green" salted hog meats, packed in boxes or barrels, in carloads, or mixed with other packing-house products in carloads, from Mason City to points in official classification territory east of the Indiana-Illinois state line, are unreasonable and excessive to the extent that they exceed the rates charged on the same commodities when shipped loose or in bulk. These terms have the same meaning in this case and the latter will be used hereafter.

The meats here involved, including hams, shoulders, sides, and other hog meats, are salted as soon as cut. In some cases they are shipped at once, but in others are held from one to three days. Most of the shipments are forwarded in bulk, by which it is understood that the cuts are not placed in containers but are piled upon the car floor or upon racks resting thereon, the only protection being paper placed beneath the meats and at the sides and ends of the car. Some consignees prefer their shipments in containers in order to facilitate handling and distribution at destination. Such shipments are packed in boxes or barrels.

The through rates on these commodities from Mason City to eastern destinations are made up of proportionals east and west of the Mississippi River, the proportional west being 7 cents per 100 pounds on shipments either in bulk or in packages. This portion of the rates is not in controversy. The tariffs applicable east of the

Mississippi provide specific rates on these commodities shipped in bulk, but not when shipped in packages. During the years 1916 and 1917 complainant made numerous shipments in packages to Philadelphia, Pa., on which charges were paid at the rate provided for shipments in bulk, but defendants now seek to apply the fresh meat rate, which is claimed by complainant to be excessive. Shipments in bulk from Mississippi River crossings to Philadelphia take a rate of 45 cents per 100 pounds, effective September 3, 1917, as provided in Wm. Cameron, agent's, I. C. C. No. D-93. Prior to that date the rate for a long time had been 39.8 cents. The fresh meat rate is, and for several years has been, 50.5 cents.

Geo. A. Hormel & Company, packers, located at Austin, Minn., and shippers of commodities similar to those of complainant, intervened in support of complainant's contentions. Complainant and intervener claim that it would be unreasonable to apply a higher rate to their commodities when shipped in packages than when shipped in bulk. They assert that meats in bulk are more liable to damage from dirt, cinders, and water, and to loss from pilferage, than are meats in packages; that packages increase by about 8 per cent the weight on which freight is paid; and that cars can be loaded more heavily with the shipments in packages. The official classification recognizes a difference between cured meats packed and cured meats in bulk, making the former fifth class and the latter fourth class. They assert further that it would be unreasonable to apply the same rate to salted meats as to fresh meats, the salt reducing the damage risk and permitting heavier loading. Defendants' tariffs provide a carload minimum weight of 30,000 pounds for salted hog meats in bulk, but a minimum of 21,000 pounds for dressed beef, sheep, and hogs. In the official classification, the minimum for "hams, shoulders, sides, and other hog meats, in bulk, packed with ice or salt, or both" is 28,000 pounds, but for fresh meats the minimum is 20,000 pounds. It was testified that the average car loading of fresh meats to eastern territory is about 22,000 pounds, of salted meats about 31,000 pounds, and of mixed cars of salted meats and other packing-house products about 31,500 pounds.

Defendants contend that there is very little difference between fresh meats and "green" salted meats, and that the publication of lower rates on hog products in bulk, packed with ice or salt, is a voluntary concession by the carriers and is not evidence of the unreasonableness of a higher rate on the same commodities in packages. Further, that there is no evidence tending to show that the fresh meat rates as applied to the shipments in question are unreasonable *per se*, and that the complaint should therefore be dismissed, the burden of proof resting with the complainant. They

point to the fact that the western carriers apply the same rates to the Mississippi River on both fresh and salted meats. Those carriers, however, also apply the same rates to meats whether in packages or in bulk. This fact tends to support complainant's principal contention, which is that it is unreasonable to apply higher rates on meats in packages than on meats in bulk.

It should be held that this contention is sustained by the evidence. It should also be held that the carriers' proposal is not in accord with the tariff provision which requires, in the absence of a specific rating, the application of the same rating as is given analogous articles. It is apparent that salted hog meats in packages are more closely analogous to the same commodities in bulk than to fresh meats. With this interpretation and application of the tariff, it follows that complainant's shipments in question have not been undercharged.

Complainant states on brief that defendants propose so to amend the classification as to make specific provision substantially in accord with complainant's contentions.

HARLAN, *Commissioner:*

To the foregoing report, prepared by the examiner who heard the evidence, no specific exceptions have been filed; and upon an examination of the record the conclusions recommended appear to be justified. The report is therefore adopted as the report of the Commission. In the light of the suggestion that the defendants propose to amend the classification in such manner as substantially to meet the complainant's contentions, the question of an order will be reserved for further consideration.

No. 9919.

SILK ASSOCIATION OF AMERICA

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 3, 1918. Decided May 9, 1918.

1. The second Cummins amendment placed rates and ratings dependent upon the value "declared in writing by the shipper" and those predicated on the value "agreed upon in writing as the released value of the property" in the same category; such rates and ratings are unlawful unless and until expressly authorized by the Commission. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C. 510; *Live Stock Classification*, 47 I. C. C. 335; *Williams Co.* v. *H. C. N. Y. T. Co.*, 48 I. C. C. 269, reaffirmed and followed.
2. The decision in *Silk Association of America* v. *P. R. R. Co.*, 44 I. C. C. 578, in which the official classification ratings of first class and one and one-half times first class on silk valued at $1 per pound or less and in excess of $1 per pound, respectively, stated in writing by the shipper, were justified and approved, furnished lines in official classification territory with express authority to maintain such ratings within the meaning of the second Cummins amendment.
3. The present complaint, petitioning the Commission to require lines in official classification territory to establish and maintain ratings on silk predicated on the value agreed upon in writing as the released value, is dismissed on the ground that the present official classification ratings on silk, under the foregoing express authority given defendants to maintain the same, are tantamount to the alternative and optional ratings prayed for.

Austin, McLanahan & Merritt for complainant.

Stuart C. Pratt and *John L. Seager* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AITCHISON, AND WOOLLEY.

For many years prior to June 2, 1915, the official classification rating of raw, thrown, or spun silk, in less than carload quantities, was first class when the value of the silk was released to $1 per pound, and three times first class when the value was not so released. Upon the passage of the first Cummins amendment, the first-class rating was limited to silk not exceeding $1 per pound in value, while a rating of one and one-half times first class was established on silk exceeding that value. The new ratings were attacked in *Silk Association of America* v. *P. R. R. Co.*, 44 I. C. C., 578, but were not found to be unreasonable or unjustly discriminatory. Upon the passage of the second Cummins amendment, the complainant in that case petitioned the carriers in official classification territory to restore the former rating of first class on silk released to a value of $1 per pound.

This petition was declined, with the result that the present proceeding was instituted. The complaint, filed by the same association of shippers which filed the previous complaint, alleges that the refusal of defendants to establish and maintain alternative and optional rates dependent on the released valuation of silk results in an unreasonable or discriminatory practice in violation of section 15 of the act to regulate commerce, and in the collection of rates which are unjust, unreasonable, and unjustly discriminatory in violation of sections 1, 2, and 3. We are asked to establish a rating of first class on silk released to a value of $1 per pound, and a rating of one and one-half times first class on silk not so released. By stipulation of the parties, the record in the previous case was made part of the record in this case.

By the second Cummins amendment the provisions of the first Cummins amendment which invalidated all limitations of the carrier's liability for loss, damage, or injury to property transported were made inapplicable to baggage, and to property except ordinary live stock as to which "the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." In connection with the quoted exception, the Commission was empowered "to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation." It is thus seen that the second Cummins amendment placed rates and ratings dependent upon the value "declared in writing by the shipper," and those predicated on the value "agreed upon in writing as the released value of the property" in the same category. Both are unlawful until expressly authorized or required by the Commission. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335; *Williams Co.* v. *H. & N. Y. T. Co.*, 48 I. C. C. 269. If this authority has not been secured in respect to the ratings here involved, they are unlawful; if such authority has been granted, complainant's members now have the legal right to tender silk worth $3 per pound to the defendant carriers and declare the value thereof, in writing, to be $1 per pound for the purpose of securing the application of the first-class rating on the shipment. For, to quote the words of the statute—"such *declaration* or agreement shall have no other effect than to limit liability or recovery to an amount not exceeding the value *so declared* or released, and shall not, so far as relates to values, be held to be a violation of section ten of this (the) act to regulate commerce."

The supplement to the official classification in which the present ratings on silk were first published was filed in May, 1915. The complainant herein petitioned for its suspension on the ground that it would effect an increase in rates, but we declined to suspend, and the supplement became effective on June 2, 1915. The ratings were then, and are still, published in the following manner:

	L. c. l. rating.
Silk, artificial or natural:	
Raw, in bags, bales or boxes:	
When the value of the shipment exceeds one dollar per pound and the consignor so states (subject to note 1)	1½
When the value of the shipment does not exceed one dollar per pound and the consignor so states (subject to note 2)	1
If the consignor declines to state the value, *shipment will be refused.*	
Spun, schappe or thrown, including organzine, singles, tram or yarns, in bags, bales or boxes:	
When the value of the shipment exceeds one dollar per pound, and the consignor so states (subject to note 1)	1½
When the value of the shipment does not exceed one dollar per pound, and the consignor so states (subject to note 2)	1
If the consignor declines to state the value, shipment will be refused.	

NOTE 1.—When the value is stated the following must be entered in full on the shipping order and bill of lading, viz:

"The value of this shipment exceeds one dollar per pound, and is stated for the purpose of enabling the carrier to apply the proper published rate.

_____"
Signature.

NOTE 2.—When the value is stated the following clause must be entered in full on the shipping order and bill of lading, viz:

"The value of this shipment does not exceed one dollar per pound, and is stated for the purpose of enabling the carrier to apply the proper published rate.

_____"
Signature.

Our refusal to suspend, while not in any wise an express approval of the new ratings, had the effect of permitting them to become effective. On January 26, 1916, the complaint in *Silk Association of America* v. *P. R. R. Co.*, *supra*, was filed. That complaint contained the following, among other, averments:

(c) Petitioner avers, with respect to the transportation of silk, that there is no reason for making a distinction in rates according to value, or requiring shippers to pay more than first-class rates for the transportation of said silk, artificial or natural, valued at over one dollar per pound.

As the changes complained of had effected an increase in rates since January 1, 1910, the burden of proof was upon the defendants. On a very complete record we concluded that the ratings were not unreasonable or unjustly discriminatory. This conclusion was tantamount to a finding that the ratings, and therefore the value bases thereof, had been justified and were just and reasonable; and further that the defendant carriers had our express authority, within

the meaning of the second Cummins amendment, to maintain rates on silk dependent upon the value declared in writing by the shipper. The decision in that case was dated May 5, 1917, or nine months after the second Cummins amendment was passed.

AITCHISON, *Commissioner.*

The foregoing is the report proposed by the examiner, which was served upon the parties. The novel situation is presented of the defendants herein excepting to a report which proposes to dismiss the complaint, and of the complainant supporting such a recommendation. Upon the facts stated in the proposed report as above recited, the examiner recommended as follows:

The Commission should find and conclude that the present ratings on silk in the official classification are dependent upon the value declared in writing by the shipper, and that the defendant carriers have been expressly authorized to maintain such ratings. While the current official classification does not contain specific reference to the foregoing express authority of the Commission, as is required by the second Cummins amendment, the failure of the carriers to comply with the law in that regard does not and should not invalidate or destroy any right which a shipper may have thereunder. It follows that under the present ratings, the authority granted to maintain same, and the ruling that the law places rates dependent upon the value declared in writing by the shipper and those predicated on the value agreed upon in writing as the released value in the same category, complainant's members already have the alternative and optional rates on silk which they desire.

The complaint should therefore be dismissed.

Counsel for the defendants frankly state that the report proposed must be sustained unless we recede from the interpretation we placed upon the second Cummins amendment in *Express Rates, Practices, Accounts, and Revenues, supra; Live Stock Classification, supra,* and *Williams Co.* v. *H. & N. Y. T. Co., supra,* but earnestly contend that those decisions are wrong and should be reversed. As we are content with the conclusions reached in those cases, it is unnecessary to repeat the reasoning or conclusions therein contained. The conclusion of the examiner that our decision in *Silk Association of America* v. *P. R. R. Co., supra,* furnished the defendant carriers express authority from the Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, is in line with our previous informal rulings, which have been acquiesced in and have become a part of the transportation practice of the country. We are to-day holding to the same effect in *Buckeye Cotton Oil Co.* v. *G., M. & N. Ry. Co.,* 50 I. C. C., 32.

The report proposed by the examiner, with his conclusions, as above set forth, with the foregoing expression of our additional views, are hereby adopted as our own report and conclusions. An appropriate order will be entered dismissing the complaint herein.

INVESTIGATION AND SUSPENSION DOCKET NO. 71.

LOUISVILLE & NASHVILLE RAILROAD COAL AND COKE RATES.

Submitted January 11, 1917. Decided April 29, 1918.

1. The divisions under rates prescribed on coal and coke from the Appalachia and St. Charles districts in Virginia to points north of the Ohio River found to be just and reasonable as between the Louisville & Nashville Railroad Company and its connections north of the Ohio.
2. Reasonable divisions to the Interstate Railroad out of the joint through rates prescribed from the Appalachia district to points north of the Ohio River found to be 15 cents per ton on coal and 18 cents per ton on coke.

Helm Bruce and *William A. Northcutt* for Louisville & Nashville Railroad Company.

J. F. Bullitt and *William A. Glasgow, jr.*, for Interstate Railroad Company.

William A. Eggers, *C. B. Cardy*, and *William W. Collin, jr.*, for certain central freight association lines.

SUPPLEMENTAL REPORT OF THE COMMISSION ON THE QUESTION OF DIVISIONS.

McCHORD, *Commissioner:*

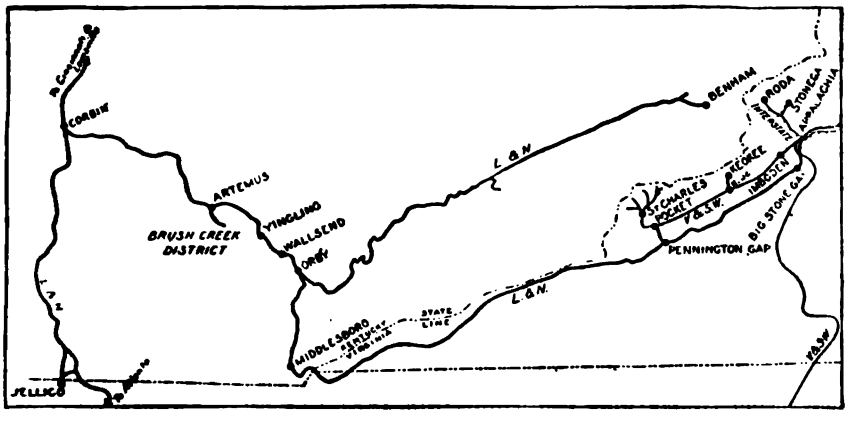
On petition of the Louisville & Nashville Railroad Company, hereinafter called the petitioner, this proceeding was reopened for further hearing for the purpose of fixing just and reasonable divisions of rates hereinbefore found reasonable for the transportation of coal and coke from the Appalachia and St. Charles districts in Virginia to points on and north of the Ohio River. The prayer of the petition is that divisions be established which will give to petitioner 25 cents and 35 cents per ton on shipments of coal from points in the St. Charles and Appalachia districts, respectively, more than petitioner receives out of the joint rates contemporaneously maintained from mines on its road in the Middlesboro district to the same points of destination; and that divisions be established on coke from the Appalachia district which will give to petitioner not less than $1.40 per ton when the traffic moves via Louisville, Ky., and not less than $1.50 when the traffic moves via Cincinnati, Ohio.

The controversy of which this case is a part was first brought to our attention in January, 1911. It represents the efforts of petitioner to secure an increase in revenue for its service in the transportation of coal and coke from the St. Charles and Appalachia districts in

Virginia to points on and north of the Ohio River. The history of this litigation, together with a description of the territory involved and the physical conditions incident to the transportation, is fully set forth in the supplemental report in *Stonega Coke & Coal Co.* v. *L. & N. R. R. Co.*, 39 I. C. C., 523. The map published in that report is reproduced here for ready reference.

It will be sufficient for the purposes of this report to review briefly the circumstances which led to the present proceeding.

Prior to March 17, 1903, petitioner assisted in the development of the coal operations in the Stonega district located on what is now the Interstate Railroad, by operating under an agreement with the owners thereof and bringing the coal and coke produced thereon down to its line at Appalachia, applying the Appalachia rate to such



shipments. On the date mentioned petitioner discontinued this service, and the predecessor of the Interstate Railroad Company thereafter secured locomotives and operated the line, charging 10 cents per ton for transporting the shipments of coal and coke to its point of interchange with petitioner's line at Appalachia. This placed the operators on the Interstate Railroad at a rate disadvantage of 10 cents per ton as compared with competitors located in the St. Charles district, about 25 miles distant over the rails of petitioner, and which is also served by the Virginia & Southwestern Railroad. On January 17, 1911, certain operators on the Interstate Railroad filed with this Commission a complaint alleging discrimination against them in favor of their St. Charles competitors.

In our original report, *Stonega Coke & Coal Co.* v. *L. & N. R. R. Co.*, 23 I. C. C., 17, decided March 12, 1912, the discrimination complained of was found to exist and required to be removed, and the defendants named therein were directed to establish through joint rates for the transportation of coal and coke from the operations

in the Stonega district. In the meantime petitioner had filed the tariffs which were suspended in the instant proceeding, proposing increased rates on coal and coke from the St. Charles and Appalachia districts, which were intended to give to petitioner revenue from this transportation equal to the proportions of the through rates prayed for in the petition here being considered. In our report, *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C., 20, decided January 7, 1913, we found that the respondents had not justified the proposed increased rates, and the suspended tariffs were ordered canceled. In *Coal Rates from Virginia Mines*, 30 I. C. C., 635, decided June 13, 1914, the differential in coal rates, St. Charles over Middlesboro, was fixed at not to exceed 10 cents per ton to points within 400 miles of St. Charles, and to points more than 400 miles distant this differential was required to be decreased at least 1 cent per ton for each 100 miles, and the Appalachia differential over Middlesboro at not more than that then in effect, and not less than the St. Charles differential over Middlesboro. Upon the expiration of the order in this proceeding, requiring the maintenance for the statutory period of the rates found reasonable, petitioner filed tariffs naming increased rates on coke, which were suspended in Investigation and Suspension Docket No. 625. It also proposed to increase the rates on coal to certain destinations, and these proposed increases were suspended by order in Investigation and Suspension Docket No. 633. This proceeding and Investigation and Suspension Docket No. 321 having been reopened for the introduction of additional testimony, and the *Stonega Case* for the purpose of fixing divisions between petitioner and the Interstate Railroad, all of these matters were considered together and disposed of in the supplemental report in the *Stonega Case*, *supra*. Therein the divisions to the Interstate Railroad were fixed at 15 cents per ton on coal and 18 cents per ton on coke; points in the St. Charles and Appalachia districts were included in one group referred to as the Appalachia group, and a differential of 15 cents over the Middlesboro-Jellico rates on coal was established; reasonable rates for the future on coke from the Appalachia group were fixed at not to exceed $2.50 per ton to Chicago, Ill., with proportionately scaled rates to the other destinations involved.

The evidence introduced by petitioner consists chiefly of exhibits compiled to show petitioner's revenue per ton per mile out of the prescribed rates on coal from the Appalachia and St. Charles districts, and on coke from the Appalachia district to destinations north of the Ohio River, after allowing lines north of the river their proportions, and on traffic from points on the Interstate Railroad after allowing 15 cents per ton on coal and 18 cents on coke for the haul

to Appalachia. The revenue per ton per mile accruing to the lines north of the Ohio River is shown, together with the total distances to the various destinations and the distances to and from the river. The exhibits cover several thousand rates carried in the tariffs of petitioner, and the witness for petitioner stated that they include more than 50 per cent of the total number of rates involved and that they are representative of the entire territory to which this traffic moves.

It appears from the exhibits that petitioner's ton-mile revenue under its proportions of the prescribed rates on coal from the Appalachia district ranges from 1.63 to 3.56 mills via Cincinnati, and from 2.14 to 4.11 mills via Louisville; and its ton-mile revenue on coal from the St. Charles district ranges from 2.12 to 4.27 mills via Cincinnati and from 3.01 to 4.89 mills via Louisville. Petitioner's haul from Appalachia is 295 miles to Cincinnati and 280 miles to Louisville; and its haul from St. Charles is 281 miles to Cincinnati and 266 miles to Louisville. The comparatively lower revenue shown on traffic from Appalachia is due to the fact that the allowance of 15 cents per ton to the Interstate Railroad has been deducted. No testimony or exhibits were introduced showing volume of the movement to the various destinations, and there is no evidence of record to show the actual movement of the traffic or the revenue actually derived therefrom.

In justification of the claim for divisions that will yield 35 cents per ton from the Appalachia district and 25 cents per ton from the St. Charles district more than its revenue on coal from the Middlesboro-Jellico district to the same destinations, petitioner contends that the cost of transporting coal from the first two districts to Orby, Ky., a point on its Cumberland Valley division, 11 miles west of Middlesboro, is approximately the amounts named greater than the cost to it of bringing coal to Orby from points on the Middlesboro Railroad, a short branch line which connects with its Cumberland Valley division at Middlesboro, and from points on the Kentucky & Virginia Railroad, which connects with the same division at Orby. The distances from St. Charles and Appalachia to Orby are about 50 miles and 70 miles, respectively. The haul to Orby is therefore but a small portion of the through haul on this traffic, the distances to some of the destinations being more than 600 miles. While petitioner contends that it receives from this traffic only nominal revenue, no effort has been made to show that its connections north of the river receive other than nominal revenue from their proportions of the through rates. Petitioner insists that the divisions asked will give to it revenue commensurate with the service performed. We think that when a road seeks an increase in its division of a joint

through rate there is cast upon it the burden of proving under all the circumstances that, as compared with the divisions received by its connections, it receives an unreasonably low proportion of the entire rate.

On behalf of the lines north of the Ohio it is shown that the rates under consideration were voluntarily established by petitioner, which sought a market in central freight association territory for coal produced at points on the Cumberland Valley division; that in order to open up that territory to this traffic on a competitive basis the northern lines have accepted reductions in divisions to certain destinations, ranging from 5 cents to 35 cents per ton; that the northern lines receive the same proportions from all the southern lines on coal accepted at Cincinnati and Louisville. It is asserted that certain of the northern lines originate a large tonnage of coal which is similar in physical characteristics to that produced by mines served by petitioner, and the inference is drawn that coal coming from the latter mines displaces tonnage which might move from mines on these northern lines. We are reminded that on the original hearing of this proceeding, when petitioner was seeking an increase in these rates, its witness testified that the divisions to the northern lines out of these rates were not excessive.

The evidence submitted by petitioner in support of the claim for increased divisions out of the through rates on coke from the Appalachia district is similar in import to that relating to coal. Coke is not produced in the St. Charles district. It is shown that petitioner's ton-mile revenue under its proportions of the prescribed rates ranges from 2.76 to 4.96 mills after allowing the Interstate Railroad 18 cents per ton and the lines north of the river their proportions. Petitioner is asking for an increase in revenue only out of those rates which do not now yield the minimum revenue desired. Petitioner's witness admitted that many of the rates now yield the minimum. The evidence, however, does not show what proportion these rates are of the total number of rates involved, nor is there any evidence to show the revenue received by petitioner out of the rates under which the traffic actually moves.

From a consideration of all the facts and circumstances of record, we are of opinion and find that the divisions as between petitioner and its connections north of the Ohio River on coal and coke from the Appalachia and St. Charles districts in effect at the time this supplemental proceeding was submitted are just and reasonable divisions of the joint through rates prescribed in this proceeding.

We have left for consideration the question of divisions to the Interstate Railroad out of the joint through rates prescribed on coal and coke from points on that line to points in central freight asso-

ciation territory. The order reopening this case excepts from the inquiry any reconsideration of the divisions to the Interstate Railroad which were fixed by order of May 23, 1916, accompanying the supplemental report in the *Stonega Case*, supra. In that case the only so-called northern line made defendant was the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, hereinafter called the Big Four. All of the central freight association lines are respondents to this proceeding, and divisions to the Interstate Railroad of the rates heretofore prescribed to points reached by carriers not parties to the original *Stonega Case* will be considered. The evidence introduced by the witness for the Interstate Railroad Company brings up to the date of hearing the evidence introduced by it in the *Stonega Case* on the question of divisions with petitioner, consisting principally of statistics showing the cost to this carrier in originating the traffic and delivering it to petitioner at Appalachia, which for coal is shown to be 17.8 cents per ton and for coke 18.7 cents per ton. At the hearing counsel for petitioner questioned the method followed in allocating operating expenses as between freight and passenger traffic on the basis of total freight-car miles and total passenger-train miles, assigning 95.1 per cent of operating expenses to freight traffic and 4.9 per cent to passenger traffic. It is admitted on behalf of the Interstate Railroad Company that the method used is not strictly accurate, but it is claimed that the passenger service is relatively unimportant as compared with the freight service, and that any inaccuracy in this respect would not appreciably affect the general result.

Upon consideration of all the facts and circumstances of record, and following our decision in the supplemental report in the *Stonega Case, supra*, we are of opinion and find that 15 cents per net ton on coal and 18 cents per net ton on coke are reasonable divisions to the Interstate Railroad Company out of the joint through rates heretofore prescribed to points north of the Ohio River, these divisions to take effect as of August 21, 1916, the effective date of our order prescribing such joint through rates.

Since this proceeding was submitted the rates on coal and coke from and to the points involved have been increased following our decision in *The Fifteen Per Cent Case*, 45 I. C. C., 303.

An order will be entered in accordance with the findings.

DANIELS, *Chairman*, and HALL, *Commissioner*, dissent.

ANDERSON, *Commissioner*, did not participate in the disposition of this case.

No. 9498.

EASTERN SHORE OF VIRGINIA PRODUCE EXCHANGE
v.
WESTERN MARYLAND RAILWAY COMPANY ET AL.

Submitted March 15, 1918. Decided May 9, 1918.

Through routes and joint rates, from wharves in Northampton and Accomac counties, Va., by steamboat to Baltimore, Md., and thence via the Western Maryland Railway and its connections to points served by them, should be established.

John B. Daish and *Thomas G. Smiley* for complainant.

W. S. Burton for Western Maryland Railway Company; *T. Murdock* for Baltimore, Chesapeake & Atlantic Railway Company; and *Ralph Robinson* and *Henry Wolfe Biklé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

HALL, *Commissioner:*

In this proceeding the complainant asks the establishment of through routes and joint rates on vegetables in carload lots from wharves in Northampton and Accomac counties, Va., to destinations on the lines of the Western Maryland Railway and its connections, particularly in central freight association territory. By these routes the traffic would move in steamboats of the Baltimore, Chesapeake & Atlantic Railway Company to Baltimore, Md., and thence over the Western Maryland Railway, or over that line and the lines of the New York Central system, to destination.

Complainant markets the produce of Northampton and Accomac counties, commonly known as the eastern shore of Virginia. These counties form the southern part of the peninsula between Chesapeake Bay and the Atlantic Ocean. The wharves named in the complaint are: Onancock, Finneys, Poplar Cove, Pitts, Harborton, Evans, Boggs, Cedar View, Nandua, Concord, Morleys, Davis, and Shields, all on Chesapeake Bay, and are served by steamboats of the Baltimore, Chesapeake & Atlantic Railway, plying from Baltimore. Through routes and joint rates, by way of said steamboats and the lines of the Pennsylvania and Baltimore & Ohio systems, are now in effect from these wharves to points in central freight association territory. These joint rates are made on the basis of a 3-cent differential over the joint class rates from the group of origin which

embraces all stations in these counties on the line of the New York, Philadelphia & Norfolk Railroad, considered in *Eastern Shore of Virginia Produce Exchange* v. *R. R. Co.*, 40 I. C. C., 328 at 329.

The lines of the New York Central system were duly served with complaint and filed answer, but did not appear at the hearing.

On behalf of defendants, other than the New York Central lines, it was conceded that the through routes should be established upon the basis of the joint rates contemporaneously in effect over the present through routes, and that these rates would have been established voluntarily had it not been for their failure to agree with the New York Central lines in the matter of divisions.

The traffic from these wharves by way of the Western Maryland to points served by it or to points in central freight association territory can move now only at the sum of the proportional rate to Baltimore and the rate thence to destination; the resulting combination is unduly high as compared with the joint rates to points similarly situated on lines over which through routes are now in effect; and to many points the routes proposed are the most direct. The carriers primarily interested in the present and proposed through routes, that is to say, the Baltimore, Chesapeake & Atlantic Railway Company, a part of the Pennsylvania system, and the Western Maryland Railway Company, consent to the proposed routes and rates. The other defendants made no showing in opposition thereto.

Through routes and joint rates on vegetables in carloads from the wharves named to points served by the Western Maryland, and by that line and its connections to points in central freight association territory, should be established, and these rates should not be in excess of those contemporaneously maintained via the Pennsylvania and Baltimore & Ohio systems to the same or similarly situated destinations. If such routes and rates are not established within 60 days after service of this report, or if defendants fail to agree concerning their divisions of the joint rates, the matter may be brought to our attention for such action on our part as may be deemed appropriate.

No order will be entered at this time.

INVESTIGATION AND SUSPENSION DOCKET No. 1126.

EASTBOUND TRANSCONTINENTAL CANNED GOODS (No. 2).

Submitted March 11, 1918. Decided May 2, 1918.

Proposed change in the description of the articles now transportable under a commodity item providing for the movement of canned goods and preserves from California terminals and intermediate points taking the same rates, to eastern defined territory, i. e., from the Missouri River to the Atlantic seaboard, and other eastern destination points, whereby dried, evaporated, or fresh fruits or raisins, and dried, evaporated, or pickled vegetables, in glass, earthenware, or metal cans, are to be excluded from the application of the rates provided thereunder and other and higher commodity rates now applicable to the transportation in wooden containers of the same commodities similarly processed and not different in character, are to be imposed, found to have been justified.

A. P. Matthew, *Elmer Westlake*, *W. A. Poteet*, and *Paul P. Hastings* for respondents.

W. D. Wall for George P. Hyde & Company, Richardson & Robbins Company of California, and Golden Gate Packing Company.

Leslie S. Smith for Kings County Packing Company.

H. E. Van Horn for California Packing Corporation.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The existing commodity description of canned goods and preserves shipped in glass, earthenware, or metal cans, from terminal points in the state of California and intermediate points taking the same rates as the terminal points, to destinations in eastern defined territory, comprising that portion of the United States from the Missouri River to the Atlantic seaboard, includes, among numerous other edible products, fruits and vegetables. The carriers respondent herein, parties to transcontinental freight bureau tariffs, by tariff items filed to become effective September 6, 1917, proposed to withdraw from this commodity description dried, evaporated, or fresh fruits or raisins, and dried, evaporated, or pickled vegetables. Another commodity item in the same tariff provides for the transportation from and to the same points of dried fruit, including raisins and prunes, and dried vegetables shipped in wooden containers. The carload commodity rates applicable to the transportation of canned goods are graded in amounts dependent upon two

weights of minimum carloads which may be shipped: 85 cents per 100 pounds for the transportation of a minimum of 40,000 pounds; 72½ cents per 100 pounds for a minimum of 60,000 pounds. The less-than-carload rate is $1.50 per 100 pounds. The rates applicable to the transportation of dried fruits and vegetables in wooden containers are similarly graded dependent upon the minimum carload weights transported: $1.10 for the lesser and $1 for the higher minimum. The less-than-carload rate is $2.20. The effect of the exclusion of dried fruits and dried vegetables from the description of other canned goods is to make applicable the higher commodity rates now applicable to the transportation of dried fruits and dried vegetables when transported in wooden containers.

The respondents proposed to make a similar change in these rates and descriptions in a tariff filed to become effective April 9, 1917. The Commission suspended the operation of the increased rates then proposed in Investigation and Suspension Docket No. 1059, *Eastbound Transcontinental Canned Goods.* The carriers were permitted, under special permission of the Commission, to withdraw the increased rates then proposed to remove them as an obstacle to their application for a general advance in all rates to the extent of 15 per cent. *The Fifteen Per Cent Case*, 45 I. C. C., 303. The application of western carriers for a general increase was there denied. The operation of the increased rates now proposed was suspended upon the protests of canners of fresh fruits and packers of dried fruits in the state of California; of Libby, McNeil & Libby and Armour & Company, of Chicago, in the state of Illinois; the J. S. Brown Mercantile Company of Denver, in the state of Colorado, and the Topeka Traffic Association of Topeka, in the state of Kansas.

Export rates to north Atlantic, south Atlantic, and Gulf ports and rates to various southeastern points, are also proposed to be increased. The underlying reason for these proposed increased rates is that upon which the increased rates to eastern defined territory are proposed. The specific rates need not further be considered.

The transportation of dried fruits in metal cans is recent in origin, the packing of dried prunes in cans having commenced in the year 1909. The packing of dried seeded raisins in cans is even more recent; possibly not before the latter part of the year 1915. Investigation of the files of the Western Classification Committee shows that prior to the year 1910 the only dried fruit shipped in cans was extra choice imported prunes. At the time this new use of metal containers for dried fruits was commenced, the commodity description of articles entitled to be transported at the rates applicable to the movement of canned goods from terminal points in the state of California to eastern defined territory included the general item of canned or

preserved fruit, in glass, earthenware, or metal cans, boxed. Officials of the carriers initiating the canned goods traffic in the state of California, when asked by the packers of dried fruits in cans whether the canned goods commodity rate applied, were of opinion that the wording of the tariff then in effect was broad enough to permit the transportation of dried fruits packed in cans at the rate applicable to other goods so contained. Under the description of canned goods and preserves, the respondents propose to incorporate an item providing for the transportation of fruit, not including dried, evaporated, or fresh fruit or raisins, canned or preserved in juice or sirup or in liquid other than brine, vinegar, or alcoholic liquor, in glass, earthenware, or metal cans, boxed. They also propose a new commodity item providing for the transportation of fruit (including raisins, prunes, figs, berries, and fig pulp) and vegetables, dried or evaporated, other than candied, crystallized, glaced, or stuffed, in glass, earthenware, metal cans, fiber cans, or cartons, boxed, or in bulk in boxes. These commodity descriptions, recommended by the Committee on Uniform Classification, repeat and duplicate the descriptions provided in the western classification for the classification of the same commodities. Dried apricots, blackberries, cherries, currants, nectarines, peaches, pears, plums, prunes, or raisins, in fiber or metal cans, are rated, in carload quantities of 30,000 pounds in western classification, fourth class; but canned or preserved fruits, in carloads of 36,000 pounds, are rated fifth class. This classification distinction between dried fruits and canned or preserved fruits also obtains in the ratings provided in the official and southern classifications.

No testimony was adduced in the reference to the transportation of dried vegetables. Practically all of the testimony of the protestants who appeared at the hearing was confined to the effect of the increased rates proposed upon the transportation of dried prunes and raisins, although mention was made of dried apricots and peaches being also packed in cans.

Prunes inclosed in cans are either canned in sirup or packed in the cans in dried form without the addition of sirup. Until the prunes are put in the can there is no difference in the picking, selection, drying, or other preparation between those shipped dried and those shipped with sirup. The quantity of prunes shipped in sirup, however, is of course less to the extent the space in a can of canned prunes is filled with sirup; the dried prunes occupy the full space in the can. The sirup consists of about one-third of the contents in the canned product.

Seeded raisins are produced from grapes the skins of which have been punctured by saws to permit the removal of the seeds. In this

process some of the juice of the grape exudes, but is not permitted to escape. When the dried seeded raisin is packed in a can some of the juice which has flowed from the punctured grape is restored to the dried raisin, but the amount of juice thus returned to the fruit is only sufficient to and merely for the purpose of holding the sugar content of the fruit in solution, or, as it is commercially expressed, to prevent sugaring. One of the protestants contends that the restoration of some of the juice has the effect of making dried seeded raisins a preserve, but the purpose of the addition of the juice is merely as stated.

Both prunes and raisins, dried and packed in cans, are more valuable than an equal quantity of the same products of fruits canned or preserved. Prunes, both dried and in sirup, are shipped in cans of the same size and those cans are inclosed in boxes having a capacity of 24 cans. The dimensions and weight of the filled boxes are the same. But, as we have already observed, the prune content when the product is shipped in dried form is more concentrated, the canned or preserved product comprising some sirup. Dried prunes in cans are more valuable by at least 37.5 per cent than the canned or preserved prunes.

Dried seeded raisins are shipped by one of the protestants in what is known as a No. 1 eastern oyster can, the dimensions of which are: Height, 4 inches; width, 2¾ inches. A can of that size is packed with 12 ounces of raisins. Dried seeded raisins are also packed in paper cartons. These cartons are packed with a sufficient amount of raisins so that the raisins, after shrinkage, will weigh 15 ounces. The dried seeded raisins in cans are packed in 48-can capacity boxes; the paper cartons in 36-carton capacity boxes. Each box, however, weighs 36 pounds net. A box containing 48 cans of dried seeded raisins is 1¼ inches longer, 1 inch deeper, and three-eighths of an inch wider than the box containing 36 paper cartons of dried seeded raisins. A box having a capacity of thirty-six 1-pound cartons of dried seeded raisins is billed at an estimated weight of 40 pounds; a box having a capacity of forty-five 12-ounce cartons of dried seeded raisins at 38 pounds. A tariff check fails to disclose provision for an estimated weight on a box containing forty-eight 12-ounce cans of dried seeded raisins. The 12-ounce can and the 15-ounce carton retail for the same price, but the price f. o. b. coast of dried seeded raisins in cans is materially higher than that of dried seeded raisins in paper cartons.

Dried prunes and raisins contained in cans are packed by the same machinery used in canning fresh fruits. Similar machinery is not used in plants which pack dried fruits in boxes. Plants at which fruits are dried and packed in boxes are differently constructed from

those plants where fruits are preserved and put in cans. The dust present in plants where fruits are dried for shipment in boxes would injure the dried product to be inclosed in cans and hence the two products are not produced in the same plants. However, these are all facts antecedent to transportation which the Commission may not legitimately consider in the determination and fixation of rates.

Obviously, hermetically sealed metal containers are more sanitary than wooden containers. Protestants contend that dried fruits in metal containers longer retain their natural flavor and that worms and germs, dust and dirt, and all other injurious agents and odors are practically eliminated. In fact, when shipped in cans prunes and raisins, instead of deteriorating as do the same commodities when contained in boxes, tend to improve in quality and taste similarly to the improvement wines undergo when aged. Protestants are united in affirming that the practice of putting dried prunes and raisins in cans produces articles which are superior in quality, marketability, and value to the same articles when packed in paper cartons or in bulk in boxes; in fact, one protestant acclaims canned dried prunes as almost a confection. But value and those things which connote it normally make for rates which may properly be higher than those on articles of lesser worth.

One of the protestants also objects to the imposition of rates on dried canned fruits higher than those applicable on other canned goods because thereby the mixture of the two kinds of commodities in carloads would be abolished. However, the specific testimony is that at least 95 per cent of the dried seeded raisins inclosed in cans are shipped in straight carloads.

Respondents assert that the only question raised for determination in this proceeding is: Are raisins, prunes, and other dried fruits, the same in form and character as other dried fruits and offered for transportation as such, changed in their form and character by being inclosed in metal containers? Having due regard for the rules and regulations of the carriers which provide rate differences on the same commodity dependent upon the security and desirability of the package in which it is contained, manifestly the covering of or package in which an article is contained does not stamp with its character the contents of the package. Under the proposed rates, prunes in sirup, in cans, will move at the rates applicable to other preserved or canned goods; dried prunes, whether they be packed in cans, boxes, or cartons, will take dried fruit rates and thus any discrimination between dried fruits will be obviated. Dried prunes, in sacks, now take a rate slightly higher than prunes in boxes.

Respondents also contend that the broadly inclusive terms of the tariff in effect when dried fruits in cans were first marketed possibly

permitted of the transportation of dried fruits in cans at the rates applicable to canned goods merely because they were inclosed in cans and that the proposed change in the commodity descriptions is solely for the purpose of restoring to the transportation of dried fruits rates which should originally have been applied.

We take it that inasmuch as the commodity descriptions of the articles entitled to the canned goods rate provide for their transportation in glass and earthenware as well as in metal cans; include such articles as catsup, milk, soups, broths, chowders, clam juice, and fruit juices shipped in glass; as the word "canned" is used with the disjunctive "or" in connection with the word "preserved," that the word "canned" denotes a process of preservation of the contents rather than the receptacle in which the goods are placed. In this sense dried fruits are not "canned," but, after being processed similarly in all respects to other dried fruits shipped in wooden containers, are placed in metal cans because those containers are commercially more sanitary and desirable packages.

Although not exactly in point a decision of the Commission is interesting in this connection. *Iowa Soap Co.* v. *C., B. & Q. R. R. Co.*, 16 I. C. C., 444. There the defendants sought to apply first-class rates to shipments of soap, rated fourth class, because a safety pin, rated first class, was placed on each cake of soap. While the Commission held that the pin was a trade-mark and not a premium, as contended by defendants, its presence did not prohibit the shipment of soap at soap rates. The Commission said if it was reasonable to charge first-class rates on soap because a safety pin was placed upon it, it would seem equally reasonable to charge second-class rates upon the soap because it was contained in paper wrappers, or third, on account of the nails used in the box. The aptness of the allusion is that we must look to the character of the commodity itself, not its container, to determine rate applicability.

The attorney-examiner recommends that the Commission should find, on the facts in this proceeding, that respondents have justified the proposed changes in commodity descriptions resulting in increased rates. Such finding, however, as the proceeding has no reference to the amounts of the rates, should be made without prejudice to protestants filing formal complaint attacking the increased rates as *per se* unreasonable.

HARLAN, *Commissioner:*

Since no error or inaccuracy in the foregoing report proposed by the examiner has been suggested by the parties upon whom the report was served in accordance with our practice, it is assumed to contain an accurate statement of the case.

The issue, simply stated, is whether or not the rates at present charged for the transportation of dried, evaporated, or fresh fruits or raisins and dried, evaporated, or pickled vegetables, when packed in wooden boxes, assuming such rates to be reasonable, are also reasonable for the transportation of the same commodities when packed first in glass, earthenware, or metal cans and then encased in wooden boxes. The record clearly shows that dried fruits and vegetables when packed in cans are in all respects superior to the same articles when packed in bulk in boxes, and there appears to be no logical reason, when the former method of packing is employed, why a lower rate should apply.

Upon the facts stated we are of the opinion that the examiner's recommendations are sound, and therefore adopt as our own his report in the case. An order will be entered vacating the order of suspension.

No. 9635.

WEST VIRGINIA RAIL COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted September 15, 1917. Decided May 2, 1918.

Rate on steel rails, in carloads, from Huntington, W. Va., to Cleveland, Ohio, found not to be unreasonable or unduly preferential of Newark, Ohio, Buffalo, N. Y., or Johnstown or Pittsburgh, Pa. Complainant not shown to have been damaged by the alleged undue preference of Cumberland, Md., and complaint dismissed.

W. P. Tingley and *Willis H. Fowle* for complainant.

J. S. Patterson, *William Ainsworth Parker*, and *Charles R. Webber* for Chesapeake & Ohio Railway Company and Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of light steel rails at Huntington, W. Va. By complaint filed April 16, 1917, as amended, it alleged that defendants' rate of $2 per long ton on iron and steel rails and iron and steel crossties, in carloads, from Huntington to Cleveland, Ohio, was and is unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation. Rates are stated in amounts per long ton unless otherwise specified.

The complaint alleges that the rate assailed is unduly prejudicial in comparison with the rates to Cleveland from "other rail manufacturing points, and particularly Cumberland, Md." At the hearing complainant took the position that the rate assailed was unduly preferential of Cumberland, Newark, Ohio, Buffalo, N. Y., and Johnstown and Pittsburgh, Pa., and submitted evidence in support thereof. On brief defendants, for the first time, objected to the consideration of the issue of undue preference of Newark, Buffalo, Johnstown, and Pittsburgh.

It was testified that about 1903 or 1904, when the production of steel rails at Huntington was being inaugurated, the Baltimore & Ohio Railroad Company took up the matter of establishing commodity rates to various coal fields. Although at the time there was no demand therefor, that carrier, in order to prepare for future

emergencies, undertook to check in a full line of commodity rates to points in central freight association territory. Investigation having developed that rates on rails from central freight association producing points were constructed upon no uniform basis, rates equal to the existing rates in the opposite direction were established from Huntington. Although no rate was in effect at that time from Cleveland to Huntington, a rate of $1.90 was maintained to that point from points in the vicinity of Cleveland and that rate was established from Huntington to Cleveland. This rate was increased to $2 in October, 1914, following *The Five Per Cent Case*, 31 I. C. C., 351. The burden of justifying the increased rate is upon defendants.

The evidence as to the intrinsic reasonableness of the rate assailed consists principally of comparisons with rates, and ton-mile earnings thereunder, from Huntington, Newark, Pittsburgh, and Cumberland to various points in central freight association territory. The shortest possible routes from Huntington to Cleveland are by way of the Chesapeake & Ohio Railway or the Baltimore & Ohio to Kenova, W. Va., Norfolk & Western Railway to Columbus, Ohio, and the Cleveland, Cincinnati, Chicago & St. Louis Railway beyond; or over the Baltimore & Ohio to Point Pleasant, W. Va., Kanawha & Michigan Railway to Corning, Ohio, Zanesville & Western Railway to Zanesville, Ohio, and the line of the Pennsylvania Company beyond. The distance is 285 miles over either route. The Chesapeake & Ohio testified that the route through Kenova is not one of its established routes, but under its tariff the rate is applicable over that route. The same rate also applies over the other routes described, except over the Baltimore & Ohio by way of Kenova. The Chesapeake and Ohio submitted an exhibit showing what its witness testified to be all of the established routes over which it operates under the $2 rate. For the 12 routes shown, the distances range from 316 to 565 miles, with an average of 453 miles. There are two routes over the Baltimore & Ohio all the way, one through Akron, Ohio, 369.1 miles, and the other through Sterling, Ohio, 378.7 miles. Complainant ships over the Baltimore & Ohio and over various routes in which the Chesapeake & Ohio is the initial carrier, two specifically named being, respectively, 423 and 465 miles long. The long ton-mile earnings over the two Baltimore & Ohio routes are 5.42 and 5.28 mills, respectively, and by way of the various Chesapeake & Ohio routes range from 3.54 mills for 565 miles to 7.02 mills for 285 miles, the average distance being 453 miles with earnings of 4.42 mills.

The rate assailed is not out of line with the rates from Huntington to other points in central freight association territory, distance considered. The same rate applies to Akron, Wellington, and Youngstown, Ohio, and Pittsburgh and Sharon, Pa., for short-line distances

ranging from 248 to 356 miles, which yield ton-mile earnings of from 5.62 to 8.06 mills. In but three instances are the earnings under the various rates cited as applying from Huntington lower than under the rate assailed for the short-line distance, and these exceptions involve hauls of 322, 356, and 515 miles.

Rates from Newark to various destinations in central freight association territory were cited. With the exception of the distance to Buffalo, N. Y., which is 330 miles, the distances are substantially less than the short-line distance from Huntington to Cleveland, and the earnings range from 7.51 mills for 197 miles to 32.92 mills for 24 miles.

Comparison with the rates from Pittsburgh for comparable distances is not unfavorable to the rate assailed, as shown by the following table:

From Pittsburgh to—	Rate.	Short-line distance.	Long ton-mile earnings.
		Miles.	*Mills.*
Buffalo	$1.74	234	7.44
Marion, Ohio	1.74	211	8.25
Tiffin, Ohio	1.84	219	8.40
Toledo, Ohio	1.90	239	7.95
Lima, Ohio	1.90	261	7.28
Cincinnati, Ohio	2.00	307	6.51

Rates on rails from Cumberland westbound, except for short distances, are made 20 cents per ton over the Pittsburgh rates, and they are, in general, upon a lower basis, short-line distance considered, than the rates from Huntington. The rate from Cumberland to Cleveland was $1.68 at the time the complaint was filed. The distance from Cumberland to Cleveland by way of the Baltimore & Ohio and the Pittsburgh & Lake Erie and the Erie railroads, the shortest route, is 285 miles, or the same as from Huntington to Cleveland by way of the shortest route. While it was testified that this route is not used, the rate was applicable thereover. The distance over the Baltimore & Ohio all the way is 316 miles, or the same as from Huntington to Cleveland over the route alleged by defendants to be the shortest established route. The rate from Cumberland to Cleveland is on a lower basis, distance considered, than the rates from Huntington and Pittsburgh, owing to the fact that a differential of but 20 cents is added to the Pittsburgh rate for an added distance of 150 miles. This added distance is approximately 114 per cent of the short-line distance from Pittsburgh to Cleveland, whereas the differential is only about 13.5 per cent of the Pittsburgh-Cleveland rate. The Pennsylvania Railroad, which serves Cumberland, has never recognized this differential adjustment. Its rate to Cleveland was

$2.88 per long ton at the time the complaint was filed, and is now $3.30 per long ton, which rates are obviously based upon the sixth-class rates of 14.4 cents and 16.5 cents per 100 pounds. The Baltimore & Ohio, the only defendant which serves Cumberland as an initial carrier, takes the position that the differential adjustment is improper and results in a rate from that point to Cleveland which is too low. Effective September 1, 1917, it increased the rate to $1.94. The increase was not protested except by complainant which does not ship from Cumberland. Complainant observes that corresponding increases have not been made in the rates from Cumberland to other points in central freight association territory which are based upon the same differential adjustment. That fact is not material to the issues herein.

From the other points alleged to be preferred the rates and short-line distances to Cleveland and the long ton-mile earnings thereunder are as follows:

From—	Rate.	Short-line distance.	Long ton-mile earnings.
		Miles.	*Mills.*
Johnstown	$1.68	208	8.08
Buffalo	1.48	183	8.09
Pittsburgh	1.48	133	11.21
Newark	1.48	147	10.07

The evidence as to competition is general, it being testified that complainant meets the competition of mills located at various points in central freight association territory, including Cumberland, Johnstown, Buffalo, Pittsburgh, and Newark, wherever it sells rails.

The Chesapeake & Ohio does not serve Cumberland as an initial carrier, nor does it participate in rates from that point to Cleveland. It therefore does not subject Huntington to undue prejudice. The Pennsylvania Railroad, the Western Maryland Railway, and the Cumberland & Pennsylvania Railroad also serve Cumberland, but are not named as defendants. Substantially no evidence of unjust discrimination was adduced.

Upon the facts of record, we find that the rate assailed was not, and is not, unreasonable, or unduly preferential of Newark, Buffalo, Johnstown, or Pittsburgh. Any undue preference of Cumberland, which may have existed, has now been removed, and there is no proof of damage to complainant by reason of the alleged discrimination.

An order dismissing the complaint will be entered.

No. 9890.

AUGUST WILKE
v.
CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted December 20, 1917. Decided May 2, 1918.

Charges on horses and mules, in carloads, from Grand Island, Nebr., and Kansas City, Mo., to Montgomery, Ala., found to have been unlawful. Reparation awarded.

J. D. Patterson, jr., for complainant.
D. Lynch Younger for Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is engaged in buying and selling horses and mules at Montgomery, Ala. By complaint filed September 19, 1917, as amended, he alleges that the aggregate of the intermediate rates to and from St. Louis, Mo., and Cairo, Ill., charged by defendants on numerous carloads of horses and mules, shipped from Grand Island, Nebr., and Kansas City, Mo., to Montgomery, subsequent to September 20, 1915, were and are unreasonable and in violation of the fourth section in that they exceeded and exceed the aggregate of the intermediate rates contemporaneously in effect to and from Wickliffe, Ky. He prays for reparation and the establishment of reasonable rates. Rates are stated in amounts per car.

The shipments moved over defendants' lines through Cairo and Wickliffe. There were and are no joint rates in effect on horses and mules from Kansas City and Grand Island to Montgomery. Charges were collected on the shipments from Grand Island on the basis of a combination rate of $195, composed of rates of $75 to St. Louis and $120 beyond, and on the shipments from Kansas City at a rate of $152, composed of $57 to Cairo and $95 beyond. There were and are in effect over the routes of movement combination rates of $171.25 from Grand Island to Montgomery, composed of rates of $87 to Cairo, $12 from Cairo to Wickliffe, and $72.25 beyond; and $141.25 from Kansas City, composed of rates of $57 to Cairo, $12 from Cairo to Wickliffe, and $72.25 beyond. The rates charged to St. Louis and

Cairo are proportional rates and the tariffs provide for their application to shipments destined to points in southeastern territory. Montgomery is included in this territory, as defined, but Wickliffe is not. Defendants urged that the rates from St. Louis or Cairo to Wickliffe, and from Wickliffe to Montgomery could not be used in connection with the proportional rates up to St. Louis or Cairo in constructing combination rates. An examination of the tariffs discloses no provision restricting the application of the rates to Cairo to use in connection with the rates published from Cairo to the southeastern territory, and there appears to be no tariff provision which would prevent the use of the above rates in connection with the combination from Cairo to Montgomery based on Wickliffe. In the absence of published through rates or a specific manner of constructing through rates, the lowest combination should be applied, whether comprising two or more components.

We find the rates charged to have been unlawful to the extent that they exceeded $141.25 from Kansas City, Mo., and $171.25 from Grand Island, Nebr., which were the lowest combinations of intermediate rates legally applicable on shipments moving through Cairo, Ill., and Wickliffe, Ky. There is no showing that the lawful rates were or are unreasonable or otherwise in violation of the act.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found lawful; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing as to each shipment upon which reparation is claimed, the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found lawful and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 9917.

INTERNATIONAL PAPER COMPANY
v.
DELAWARE & HUDSON COMPANY ET AL.

Submitted December 10, 1917. Decided May 2, 1918.

Rate on wrapping paper, in carloads, from Fort Edward, N. Y., to North Tonawanda, N. Y., by way of Sayre, Pa., not shown to have been unreasonable. Complaint dismissed.

D. C. Lorents for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

In the complaint in this case it is alleged that the rate of 15 cents per 100 pounds charged by defendants on certain carloads of wrapping paper shipped between March 13, 1914, and January 11, 1915, inclusive, from Fort Edward to North Tonawanda, N. Y., over an interstate route was unreasonable. It asks reparation. Rates are stated in cents per 100 pounds. The claims were filed with the Commission in season.

The shipments moved, as routed by complainant, over the line of the Delaware & Hudson Company to Owego, N. Y., and thence over the Lehigh Valley Railroad by way of Sayre, Pa., to destination. Charges were collected at the applicable sixth-class rate of 15 cents, governed by the official classification. Contemporaneously defendants maintained the same rate on printing paper, in carloads, from and to the same points, while to Niagara Falls, N. Y., a farther distant point, a sixth-class rate of 15 cents applied on wrapping paper and a commodity rate of 13.5 cents on printing paper. The tariff naming the latter rate provided, conformably to rule 77 of Tariff Circular 18-A, that upon reasonable request therefor, rates to intermediate points not exceeding those to more distant points would be established. On February 23, 1915, the 13.5-cent rate was increased to 14.2 cents, following *The Five Per Cent Case*, 32 I. C. C., 325, and on April 8, 1915, defendants established over the route of movement a commodity rate of 14.2 cents on wrapping paper and printing paper, in carloads, from Fort Edward to North Tonawanda. On May 15,

1916, this rate was increased to 15 cents, the present rate. Complainant is satisfied with the rate now in effect, but contends that the rate charged should not have exceeded 13.5 cents, which rate would have been established on printing paper to North Tonawanda on request. It does not appear, however, that any such request was made. At the time of movement there was a commodity rate of 13.5 cents on both wrapping paper and printing paper from Fort Edward to Niagara Falls over a shorter intrastate route by way of the Delaware & Hudson and the New York Central Railroad, over which route North Tonawanda is also intermediate to Niagara Falls. Complainant states that on certain shipments of wrapping paper that moved from Fort Edward to North Tonawanda over this route the New York Public Service Commission has authorized reparation to the basis of the 13.5-cent rate applicable to the farther distant point. It relies upon that circumstance and the fact that subsequent to the movement defendants established, and have since maintained, rates on both printing and wrapping paper from and to these points on a competitive basis with those applicable over the shorter intrastate route. This evidence fails to establish the unreasonableness of the rate charged.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9921.

TREXLER LUMBER COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted December 20, 1917. Decided May 2, 1918.

Allegation that charges on a carload of yellow-pine lumber from Allen, S. C., to Franklin, N. J., were assessed on an excessive weight not sustained. Complaint dismissed.

Eric E. Ebert for complainant.

Alex M. Bull for Atlantic Coast Line Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Harry C. Trexler and Fred H. Sterner, copartners, engaged in the lumber business at Allentown, Pa., under the name of Trexler Lumber Company. By complaint filed October 13, 1917, they allege that defendants' charges on a carload of lumber shipped May 5, 1916, from Allen, S. C., to Franklin, N. J., were unlawful and unreasonable in that they were computed on the basis of an excessive weight. They ask reparation.

The shipment consisted of 1 by 4 inch seasoned yellow-pine lumber dressed to $\frac{13}{16}$ by $3\frac{3}{4}$ inches. It moved over defendants' lines as alleged and charges were collected at a rate of $27\frac{1}{2}$ cents per 100 pounds on 48,400 pounds, the weight registered by the track scales of the initial carrier at Wilmington, N. C., an intermediate point. In what purports to be a copy of the invoice covering the shipment the lumber is described as 17,480 feet of No. 1 long-leaf yellow pine. Complainant asserts that this was an error and that the shipment consisted of No. 3 short-leaf yellow-pine lumber. It contends that the charges should have been based on a weight of 40,239 pounds, arrived at by using an estimated weight of 2,302 pounds per 1,000 feet, the average weight per 1,000 feet of 31 carloads of yellow-pine lumber shipped by complainant from Allen during the year 1916. The 31 carloads contained box lumber and roofers of short-leaf and long-leaf pine. Tests made by the Southern Weighing and Inspection Bureau

at Allen and at other points in the same general territory indicate that this grade of lumber weighs less per 1,000 feet than No. 1 or No. 3 of the same dimensions, and it is admitted that long-leaf pine weighs heavier than short-leaf pine. No one with personal knowledge of the grades or character of the lumber appeared at the hearing.

Defendants introduced an affidavit signed by the supervisor of the Southern Weighing and Inspection Bureau at Wilmington in which it is stated that the shipment was properly track scaled at that place. The scales used were inspected about a month prior to the time the shipment moved and about two months thereafter. On both occasions they were found to be correct and their accuracy is not questioned by complainant. The shipment was not reweighed at destination. Defendants' tariff provides that upon request therefor shipments will be reweighed at destination. Complainant insists that such request was made but defendants deny that any such request was received.

We find that the evidence introduced by complainant is insufficient to justify a disregard of the scale weight, which presumably was correct, and an order dismissing the complaint will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 1123.

NEBRASKA-COLORADO GRAIN.

FIFTEENTH SECTION APPLICATION No. 497.

Submitted January 5, 1918. Decided May 2, 1918.

1. Proposed increased rates on grain, in carloads, from Sioux City, Iowa, and certain points in Nebraska north of Omaha, to certain points in Colorado south of Pueblo found not justified. Suspended schedules ordered canceled.
2. Fifteenth section application approved.

Lyle Hubbard and *G. C. Wright* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

B. W. Robbins for Denver & Rio Grande Railroad Company.

Henry T. Clarke for Omaha Grain Exchange.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

By schedules filed to take effect September 1, 1917, respondents proposed to cancel their present joint commodity rates of 30 cents per 100 pounds on wheat and 25 cents on corn and other coarse grains, in carloads, from Sioux City, Iowa, and stations in Nebraska north of Omaha, on the line of the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, to stations in Colorado south of Pueblo, on the line of the Denver & Rio Grande Railroad, thereby rendering applicable combination rates on wheat which are from 3.4 to 10.57 cents and on coarse grains from 3 to 9 cents per 100 pounds higher than the present joint rates. Upon protest, the schedules were suspended until June 30, 1918. Rates are stated in cents per 100 pounds.

The present rates, established March 24, 1914, apply from Sioux City and 43 stations in Nebraska on the Omaha, from 5 to 156 miles north of Omaha, to 12 agency and 34 nonagency stations in Colorado on the Denver & Rio Grande, from 7 to 91 miles south of Pueblo. The routing is restricted by way of the initial line to Omaha, Missouri Pacific Railway to Pueblo, or the Chicago, Rock Island & Pacific Railway to Pueblo, Colorado Springs, or Denver, Colo., and the Denver & Rio Grande beyond. It appears that these rates

were established without the knowledge or express consent of the Denver & Rio Grande, at whose request the proposed cancellation has been filed. That carrier insists that its divisions of those rates are wholly inadequate, especially in view of the mountainous, unproductive, and sparsely settled country traversed by its line between Denver and Trinidad, Colo., its high operating expenses, and the low density of traffic. It appears that the divisions retained by the initial line in some cases exceed its local rates to Omaha. While the movement from and to the indicated points of origin and destination appears to have been small, the delivering line's dissatisfaction with its divisions was admitted to be the moving cause of the proposed cancellation, and no effort was made to establish the reasonableness of the proposed rates. We have repeatedly held that differences between carriers respecting the division of their joint rates do not afford a lawful ground for the cancellation of the rates.

Upon the facts of record we find that the proposed cancellation has not been justified, and the suspended schedules will be required to be canceled.

There was heard in connection with this case Fifteenth Section Application No. 497, filed by agents C. C. McCain, Eugene Morris, and R. H. Countiss, dated September 10, 1917, in which approval is sought for filing an amendment to their westbound tariff No. 1-P, now 1-Q, eliminating that portion of items Nos. 456-A and 1792-A of said tariff which permit the routing of grain over the Denver & Rio Grande in connection with other lines from stations on the Omaha to California terminals. Petitioners contend that the joint rates can not be divided so as to afford remunerative earnings to the carriers comprising the following routes now available: The Omaha to Omaha, Missouri Pacific and Denver & Rio Grande to Salt Lake City, Utah, and the Western Pacific Railroad beyond, or the Missouri Pacific, Denver & Rio Grande and the Colorado Midland Railway to Grand Junction, Colo., Denver & Rio Grande to Salt Lake City and the Western Pacific beyond. The closing of the Denver & Rio Grande route will not alter the through rates to the same destinations over the Union Pacific Railroad from Omaha to Ogden, Utah, and its western connections beyond, nor will the rates to intermediate points be affected. The application, the granting of which was not protested, is approved.

Appropriate orders will be entered.

No. 9134.

PIERPONT MANUFACTURING COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY.

Submitted March 10, 1917. Decided May 2, 1918.

Rates on logs, in carloads, from stations on defendant's line in South Carolina, south of Columbia, S. C., to Savannah, Ga., found not justified. Reasonable maximum rates prescribed for the future and reparation awarded.

Frank Wilby for complainants.

Claudian B. Northrop and *Alex. M. Bull* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This proceeding was instituted by the Traffic Bureau of the City of Savannah, Ga., on behalf of the Pierpont Manufacturing Company, a corporation engaged in the manufacture of boxes, crates, and baskets, and P. D. Judkins and C. C. Cambridge, copartners, engaged in the manufacture of lumber products under the name of the Savannah Planing Mill Company, at Savannah. By complaint filed August 2, 1916, it is alleged that defendant's rates on logs from stations on its line in South Carolina, south of Columbia, S. C., to Savannah are unreasonable and unjustly discriminatory. Reparation is asked on all shipments delivered since June 1, 1916, and the establishment of rates not in excess of those in effect prior to that date.

Representative points of origin, and their distances from Savannah, are: Tarboro, 37 miles; Furman, 48; Lena, 54; Seigling, 74; and Barnwell, 88; all located on defendant's main line between Columbia and Savannah. From Hardeeville, S. C., 20 miles north of Savannah, defendant operates under trackage rights over the rails of the Atlantic Coast Line Railroad to a junction with the Central of Georgia Railway near Savannah. From the junction the Central of Georgia switches defendant's traffic to the former's terminals or to points of interchange with the Seaboard Air Line Railway or the Atlantic Coast Line upon which complainants are located.

On June 1, 1916, defendant canceled its special distance scale of rates on logs from stations south of Columbia to Savannah, which had been in effect since December 18, 1909, and applied in lieu thereof its commodity rates on lumber. The former log scale was upon a

basis per car of 40,000 pounds, excess in proportion. The present rates are per 100 pounds, minimum 24,000 pounds, but, for convenience in comparison, will be referred to hereinafter on the basis of the per car charge for 40,000 pounds. The former log scale was based upon $7 per car for the first 10 miles and $1 additional for each 10 miles thereafter, and ranged from $7 for 10 miles to $18 for 120 miles; the present rates range from $17 for distances 28 to 43 miles to $26.40 for 120 miles. Representative increases in individual rates to Savannah are: Lena, 54 miles, from $12 to $18 per car; Seigling, 74 miles, from $14 to $25.60 per car; Yenome, 84 miles, from $15 to $25.60 per car; and Barnwell, 88 miles, from $15 to $24.40 per car. The rates from stations between Yenome and Seigling, both inclusive, which are intermediate Barnwell to Savannah, are higher than from Barnwell. This adjustment was created without authority from the Commission and is unlawful.

It was shown for complainants that the average increase in the present rates is 62 per cent above the former rates; and that defendant's log rates are generally about 40 per cent of its lumber rates. It is contended that the rates on logs should be lower than the rates on lumber on account of the lower value and more favorable loading and transportation conditions; that the average ton-mile earnings at the present rates are higher than those under rates now charged by defendant for similar commodities, on practically all of its divisions; that in addition to the line-haul rates complainants are required to pay a switching charge ranging from $1.50 to $1.60 per car; and that the effect of the increase in rates has been to cut off the movement of logs from the points of origin. The evidence offered in support of the allegation of unjust discrimination is unconvincing. As the rates assailed represent increases since January 1, 1910, the burden of justifying them is upon defendant.

It was testified for defendant that between Columbia and Savannah it operates through a country in which towns are few and small, the population sparse, and the principal traffic is in logs and lumber. During March, April, and May, 1916, the movement of logs over this division into Savannah consisted of 56 cars for an average haul of 50.5 miles, with an average lading of 48,217 pounds, producing an average earning per car of $13.83. The cars are usually returned empty. Based upon shipments made, the inbound and return movements are said to have consumed an average of nine days per car, and it is estimated that the trip from and to the points in question will ordinarily average about seven days, for which the average total car service expense is estimated as $10.43 per car, made up of an estimated cost of 55 cents per car per day, $2.08 trackage rights per round trip, $1.50 for switching by the Central of Georgia, and $3

reclaim which defendant must pay the delivering line for detention of the car, leaving to defendant only $3.40. During the past several years defendant has absorbed many small railroads in southern territory without disturbing their individual commodity rates. As a result it has some 70 log rate scales in effect, about 59 of which are filed with us. It was also testified that the $7 scale was first established on other portions of defendant's system in lieu of milling-in-transit rates and was restricted to tonnage which afterwards moved outbound from the milling points over defendant's line; and that later, at the instance of this Commission, the restriction as to the outbound movement was removed.

It was stated for defendant that it has in course of preparation a new scale of log rates which it intends, with the permission of the various commissions, to apply uniformly over its system on intrastate and interstate traffic alike. The proposed scale is based upon $8 for the first 10 miles and $1 for each additional 10 miles and ranges from $8 per car for 10 miles to $22 per car for 150 miles. It is $1 per car higher than the former scale. Defendant does not intend to apply the proposed scale where it operates under trackage rights over the rails of other carriers. It was testified for defendant that its intention is to withdraw, in the near future, from traffic between Hardeeville and Savannah, which will result in the withdrawal of the through rates and the application of a combination composed of defendant's distance scale rate up to Hardeeville and the Atlantic Coast Line's local rate of 2 cents per 100 pounds beyond. It is stated that for distances not exceeding 140 miles the proposed Hardeeville combination will be in most instances less, and in no case greater, than the present rates, although the movement will necessitate an additional line-haul carrier.

Numerous comparisons were offered on behalf of defendant to show that the proposed scale is lower than the intrastate scale prescribed by the South Carolina Railroad Commission for distances up to 110 miles; from $3.20 to $2.60 lower than the South Carolina interstate log scale, in effect at the time of hearing, for distances from 10 miles to 100 miles, respectively; lower than the average of nine distance scales applicable to intrastate shipments in various states throughout southern classification territory, including Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Mississippi; lower than the average of 40 distance scales applicable some on interstate and some on state traffic, and under which there is movement of logs, in Carolina, southeastern, and Mississippi Valley territories; substantially lower than the several distance scales on logs published by the Nashville, Chattanooga & St. Louis Railway applicable on various divisions in Tennessee, Georgia, and Alabama;

substantially lower than the average of certain selected distance rates effective on intrastate and interstate traffic in various states in the southwest and in central freight association and trunk line territories; and lower than the average of certain scales, for distances up to 230 miles, approved by us in *May Brothers* v. *Y. & M. V. R. R. Co.*, 26 I. C. C., 323; *Vandenboom-Stimson Lumber Co.* v. *St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432–438; *Chattanooga Log Rates*, 30 I. C. C., 36, and 35 I. C. C., 163.

We find that defendant has not justified the rates assailed, and that they were, are, and for the future will be unreasonable to the extent that they exceeded or may exceed $8 per car of 40,000 pounds, excess weight in proportion, for 10 miles or less, and $1 additional for each additional 10 miles or fraction thereof. We further find that complainant the Savannah Planing Mill Company had received at Savannah six carloads of logs shipped from certain of the points of origin, and paid and bore the charges thereon at the rates herein found unreasonable. We further find that P. C. Judkins and C. C. Cambridge, trading as the Savannah Planing Mill Company, have been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis of our conclusions herein; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record and the complainants named should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. Complainant Pierpont Manufacturing Company is not entitled to an award of reparation because it deducted the freight charges from the invoice price of the logs.

An appropriate order will be entered.

No. 9197.

ELTON LUMBER COMPANY, LIMITED,

v.

NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY ET AL.

Submitted November 15, 1917. Decided May 2, 1918.

Charges on yellow-pine lumber, in carloads, from Rhinehart Spur, La., to Lincolnville and Mahaska, Kans., and San Jon, N. Mex., found to have been unreasonable. Reparation awarded.

J. M. Simmons for complainant.

R. C. Fulbright for New Orleans, Texas & Mexico Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Hutchinson, La. By complaint filed September 25, 1916, it alleges that the rates charged on three carloads of yellow-pine lumber shipped February 25, May 22, and June 5, 1915, from Rhinehart Spur, La., to Mahaska and Lincolnville, Kans., and San Jon, N. Mex., respectively, were unreasonable and unduly prejudicial to the extent of 6 cents per 100 pounds. It asks reparation. Rates are stated in cents per 100 pounds.

The shipments moved from Rhinehart Spur to Eunice, La., over the New Orleans, Texas & Mexico Railroad, and beyond to Lincolnville and Mahaska over the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, and to San Jon over the Rock Island in connection with the Chicago, Rock Island & Gulf Railway. They weighed 64,500, 47,700, and 50,500 pounds, and charges were collected in the sums of $215.95, $176.49, and $196.95, respectively, based on combination rates, composed of a distance rate of 6 cents from Rhinehart Spur to Eunice, and the legally applicable commodity rates of 27.5, 31, and 33 cents from Eunice to Lincolnville, Mahaska, and San Jon, respectively. On that basis the charges on the shipment to Lincolnville amount to $216.08. Rhinehart Spur is a blind siding on the New Orleans, Texas & Mexico, in the vicinity of Elton, La., and is not shown in the tariffs. Only distance rates were in effect to Eunice and as the distance from Rhinehart Spur

to Eunice was not shown in the distance table referred to in connection with the rate, there was no rate legally applicable from and to those points.

Prior to November 1, 1914, joint rates of 27.5, 31, and 33 cents were blanketed from all lumber-producing points in Louisiana, including Rhinehart Spur, to the respective destinations named. On that date joint rates on lumber from points on the New Orleans, Texas & Mexico in Louisiana, including Rhinehart Spur, to destinations on the Rock Island were canceled, leaving combination rates to apply until June 20, 1915, when the joint rates formerly in effect were reestablished. The rates attacked represent increases since January 1, 1910, which defendants did not attempt to justify. The initial carrier, the only defendant represented at the hearing, admitted that complainant is entitled to reparation.

We find that the charges assailed were unreasonable to the extent that they exceeded those that would have accrued at rates of 27.5, 31, and 33 cents per 100 pounds from Rhinehart Spur to Lincolnville, Mahaska, and San Jon, respectively. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of $30.30, with interest, from all of the defendants, and in the sum of $67.19, with interest, from the Chicago, Rock Island & Pacific Railway Company and the New Orleans, Texas & Mexico Railroad Company. The outstanding undercharge may be waived.

An order awarding reparation will be entered, but as the rates herein found reasonable have been in effect for more than two years, no order for the future is necessary.

No. 9697.

OTTAWA COAL & SUPPLY COMPANY
v.
DETROIT, TOLEDO & IRONTON RAILROAD COMPANY ET AL.

Submitted September 27, 1917. Decided May 2, 1918.

1. Rates on coal, in carloads, from certain points in Kentucky to complainant's yards at Ottawa, Ohio, found to have been unreasonable. Reparation awarded.
2. Increase in Detroit, Toledo & Ironton Railroad Company's charge for switching coal, in carloads, originating at points in Kentucky, destined to complainant's yard at Ottawa, found not justified and reasonable maximum charge prescribed.

H. G. Wilson, for complainant.

J. A. Scheurman, for Detroit, Toledo & Ironton Railroad Company.

C. H. Ashar, for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the coal business at Ottawa, Ohio. By complaint filed May 21, 1917, as amended, it alleges that the charges assessed by defendants on 19 carloads of coal, shipped from certain points in Kentucky on the Louisville & Nashville and the Cumberland railroads to complainant's yard at Ottawa between May 18, 1916, and April 27, 1917, were unreasonable in so far as they exceeded the charges that would have accrued at the line-haul rate to Ottawa. It asks reparation.

The shipments moved over the Louisville & Nashville or in connection with the Cumberland to Cincinnati, and thence over the Cincinnati, Hamilton & Dayton Railway to Ottawa, where they were switched to complainant's yard, a distance of 1,400 feet, by the Detroit, Toledo & Ironton Railroad. Charges were apparently collected at the joint rates of $1.25 or $1.30 per ton legally applicable to Ottawa plus the difference between the Detroit, Toledo & Ironton's distance rate of 40 cents per ton and the Cincinnati, Hamilton & Dayton's absorption of $3 per car. It appears that the Cincinnati, Hamilton & Dayton has since refused to absorb the $3

per car charge and the delivering line is demanding of complainant the full 40 cents per ton for the service performed at Ottawa. The Detroit, Toledo & Ironton is not a party to the joint rates.

From as early as July 1, 1914, to September 20, 1915, the Detroit, Toledo & Ironton provided a charge of $3 per car for switching cars to its team tracks and private sidings at Ottawa from the Cincinnati, Hamilton & Dayton. On the latter date the provision for switching to team tracks was canceled, but the $3 charge was continued for switching to private sidings. The burden of justifying the increased charges is therefore upon defendants.

The tariffs of the Cincinnati, Hamilton & Dayton, in effect during the period of movement, provided for the absorption of connecting lines' switching charges at stations on its line where the net line-haul revenue was not less than $10 per car. So long as the $3 charge of the Detroit, Toledo & Ironton was in effect the Cincinnati, Hamilton & Dayton absorbed this amount. It would appear that its refusal now to absorb any part of the 40-cent charge of the Detroit, Toledo & Ironton is due to the fact that this is not a switching charge. The only defense interposed was by the Detroit, Toledo & Ironton, which showed that its refusal to perform this service at the former charge of $3 was due to the continued refusal of the Cincinnati, Hamilton & Dayton to renew reciprocal service with it to its team tracks at Ottawa.

Complainant urges that its yard is situated on a private siding because no other deliveries can be made on that part of the track adjacent to its yard, due to the absence of a roadway. The Detroit, Toledo & Ironton contends that it is located on a team track, since part of the track leading to complainant's yard is so used. Complainant has no interest in the track and does not share any of the expense of its maintenance. The facts of record do not support complainant's contention that this was an industry track.

We are of the opinion and find that the Detroit, Toledo & Ironton Railroad Company has failed to justify the increased switching charge on coal, in carloads, originating at points in Kentucky, on the Louisville & Nashville Railroad and Cumberland Railroad, destined to complainant's yard at Ottawa, and that any charge in excess of $3 per car for this service was, is, and for the future will be, unreasonable. We further find that defendants have not justified the maintenance of a rate on coal from points of origin in Kentucky to complainant's yard at Ottawa in excess of the line-haul rate to Ottawa, and that the rates assessed on the shipments made prior to March 16, 1917, were unreasonable to the extent that they exceeded the line-haul rate to Ottawa. We further find that complainant made the shipments as described and paid and bore the charges

thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest, on the shipments moving prior to March 16, 1917. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The outstanding undercharges should be waived. An appropriate order will be entered.

On or about March 16, 1917, the Cincinnati, Findlay & Fort Wayne Railroad, formerly a branch of the Cincinnati, Hamilton & Dayton and a connecting link at Ottawa between the Cincinnati, Hamilton & Dayton and the Detroit, Toledo & Ironton, became an independent carrier. Since the hearing of this case the Cincinnati, Hamilton & Dayton has passed into other ownership and is now operated under lease by the Baltimore & Ohio Railroad Company. Neither the Cincinnati, Findlay & Fort Wayne nor the Baltimore & Ohio is a party to this proceeding. In view of this situation we can not enter an award of reparation on this record to complainant for the one shipment which moved subsequent to March 16, 1917, nor can an order for the future be entered with reference to the line-haul rate. But the carriers not parties to this proceeding will be expected to conform their rates and practices to our findings herein. Upon failure of these carriers so to readjust their tariffs within 60 days from the service of this report complainant may ask to have the case reopened and the carriers mentioned made parties defendant, with a view to the entry of an appropriate order.

No. 8278.

CULMERS COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted February 10, 1916. Decided May 2, 1918.

Rates on petroleum products, in tank-car loads, from certain points in Missouri, Kansas, and Oklahoma to Salt Lake City and Provo, Utah, found to have been unreasonable. Reparation awarded.

H. W. Prickett and *S. H. Love* for complainant.

H. A. Scandrett and *J. V. Lyle* for the Union Pacific Railroad Company and Oregon Short Line Railroad Company.

C. S. Burg and *J. V. Lyle* for Missouri, Kansas & Texas Railway Company.

William D. Riter for Denver and Rio Grande Railroad Company and Missouri Pacific Railway Company and its receiver.

E. N. Clark and *J. G. McMurry* for Denver and Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in buying and selling petroleum and its products at Salt Lake City, Utah. By complaint filed August 28, 1915, it alleges that the rates charged by defendants for the transportation of certain shipments of petroleum products, in tank-car loads, from Independence, Niotaze, Coffeyville, and Erie, Kans., and Joplin, Mo., to Salt Lake City; from Independence to Provo, Utah; from Cushing, Okmulgee, West Tulsa, and Sand Springs, Okla., to Salt Lake City; from Cushing to Provo; and from Muskogee, Okla., to Salt Lake City, between September 17, 1913, and July 14, 1915, inclusive, were unreasonable and unlawfully discriminatory in that they exceeded the rates contemporaneously in effect to the California terminals. It prays for reparation. Rates are stated in amounts per 100 pounds.

Prior to July 15, 1915, the rate on petroleum oil from the Kansas points to Salt Lake City and Provo was 94 cents. On that date it was reduced to 90 cents, the present rate. Prior to February 1,

1916, the 94-cent rate also applied to Salt Lake City from Joplin. On that date it was reduced to 90 cents, and is still in force. The rate to the California terminals during the period of movement was also 90 cents. Prior to June 19, 1914, a commodity rate of $1.09 applied from the Oklahoma points, made up of 15 cents to the Kansas points and the 94-cent rate beyond. On that date a joint rate of 99 cents was established from the Oklahoma points and remained in force until November 30, 1915, when the combination rate of $1.09 was reestablished. Subsequently this rate was reduced to 99 cents, then to 94 cents, and on February 1, 1916, to 90 cents. The latter rate was the same as that applicable to California terminals from the Oklahoma points. The western classification rates petroleum products, in tank-car loads, fifth class. Prior to January 30, 1915, the fifth-class rate from the Kansas and Missouri points to the California terminals was 98 cents. On that date it was increased to $1. The fifth-class rates from the Oklahoma points to the California terminals during the period of movement ranged from $1.23 to $1.36.

In support of its position that the rates charged should not have exceeded the rates to the California terminals, complainant relies principally on *City of Spokane* v. *N. P. Ry. Co.*, 21 I. C. C., 400, and *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611. In those cases we denied relief from the long-and-short-haul rule of the fourth section on certain traffic, including petroleum oil originating in zone 1, which zone embraces the points of origin. The rates to the California terminals at that time were 90 cents.

Complainant asked in its petition for rates no higher than those contemporaneously in effect to the California terminals and reparation accordingly. At the hearing it asked for a rate of 66.4 cents and reparation on that basis, for the reason that in the *City of Spokane Case, supra*, we fixed a rate of 90 cents on petroleum products to Spokane, Wash., from Kansas oil-producing points, which rate was 67.7 per cent of the fifth-class rate of $1.33 contemporaneously fixed from and to the same points. In *Commerce Club, Salt Lake City*, v. *A., T. & S. F. Ry Co.*, 19 I. C. C., 218, we prescribed a fifth-class rate of 98 cents from the Kansas points to Salt Lake City. Complainant therefore asserts that as the commodity rate on petroleum products to Spokane is 67.7 per cent of the class rate the same relationship should be prescribed to Salt Lake City, which would result in a rate of 66.4 cents. There is no uniform relationship between the commodity rates on petroleum products and the fifth-class rates, nor between the rates from this territory to Salt Lake City and to Spokane. Complainant offers comparisons with rates from the Kansas and Oklahoma producing points to Chicago, Ill., and St. Louis, Mo., and shows that if the relationship existing between the commodity and fifth-class

rates to these points were prescribed to Salt Lake City and Provo a rate of approximately 50 cents would result. Complainant also observes that during the period of movement the rate on transil oil, a product of petroleum, from Missouri River points to Salt Lake City was 80 cents, minimum 30,000 pounds, and that the rate on linseed oil from and to the same points was 90 cents.

Defendants do not seriously attempt to justify the rates charged, but they contend that a rate of less than 90 cents would be unduly low, and point particularly to the fact that the operating conditions in this territory are unfavorable and that rates and earnings to these destinations can not properly be compared with those cited by complainant.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, in which we prescribed rates on petroleum oil and its products from points in Kansas and Oklahoma to various destinations, we called attention to the fact that the rate from the Kansas points to Salt Lake City was 94 cents and from Oklahoma points 99 cents, and stated that while both of these rates appeared high they were less than the fifth-class rates. It now appears that the rate from the Kansas points to Salt Lake City was reduced to 90 cents shortly before our decision in that case, and that the 94-cent rate was named in error. We made no finding with reference to the rates from the Kansas points, but found that the rates from the Oklahoma points should not exceed the rates from the Kansas points.

Following the case just cited and upon the record, we are of opinion and find that the rates assailed were unreasonable to the extent that they exceeded 90 cents per 100 pounds. We further find that complainant made shipments from and to the points in question and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed, the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected, and date thereof, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the rates herein found reasonable have been in effect for more than two years, no order for the future is necessary.

No. 9789.

CLEARFIELD LUMBER COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted November 17, 1917. Decided May 2, 1918.

Charges on a carload of oak lumber from Clearfield, Ky., to Maysville, Ky., reconsigned to New Kensington, Pa., found to have been illegal. Reparation awarded.

Blaine Fulton for complainant.
No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Clearfield, Ky. By complaint filed July 14, 1917, it alleges that the rate charged by defendants on a carload of oak lumber shipped June 18, 1914, from Clearfield to Maysville, Ky., reconsigned to New Kensington, Pa., was illegal to the extent that the component from Morehead, Ky., to Maysville exceeded 9 cents per 100 pounds. It asks reparation. The claim was presented to the Commission informally October 7, 1915. Rates are stated in cents per 100 pounds.

The shipment, weighing 34,000 pounds, moved over the Morehead & North Fork Railroad to Morehead, Chesapeake & Ohio Railway to Maysville, and thence to New Kensington, Pa., over the Chesapeake & Ohio and the Pennsylvania system. Change of destination from Maysville to New Kensington was effected at Maysville. Charges were collected in the sum of $93.50, at a combination rate of 27.5 cents, composed of rates of 2.5 cents to Morehead, 12 cents to Maysville and 13 cents beyond, plus demurrage charges of $6, which accrued at Maysville.

The rate charged for the movement from Morehead to Maysville was the Chesapeake & Ohio's distance commodity rate. At the time the shipment moved there were published, in one tariff, a specific local rate of 11 cents and a proportional rate of 9 cents applicable over the Chesapeake & Ohio from Morehead to Cincinnati, Ohio, to which Maysville is intermediate. This tariff contained a general provision by which the rates to farther distant points were made applicable to intermediate points not named therein when such

points were located between two destinations to which rates were named. It also contained a special note providing for the application of Cincinnati rates at intermediate points on the Chesapeake & Ohio not named therein. Defendants contend that as the 9-cent rate was not specifically made subject to the special note and as Maysville, which is not named in the tariff, is not between two points to which rates were named, that rate was not applicable to Maysville, but that the 11-cent rate was subject to the special note and therefore legally applicable. The note was not made applicable to the 11-cent rate by a specific reference, but applied in connection with any rate published in the tariff to Cincinnati over the Chesapeake & Ohio.

We find that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at a rate of 9 cents per 100 pounds for the movement between Morehead and Maysville, which rate we find was legally applicable. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found legal; and that it is entitled to reparation from the Chesapeake & Ohio Railway Company in the sum of $10.20, with interest.

An appropriate order will be entered.

No. 9360.

SOUTHERN ENGINEERING & CONSTRUCTION COMPANY
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 700.

Submitted April 30, 1917. Decided May 2, 1918.

1. Charges legally applicable on rails and angle bars, in mixed carloads, from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

Jack Beall for complainants.
Gentry Waldo for Houston & Texas Central Railroad Company.
R. R. Lethem for St. Louis-San Francisco Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Burr Martin, J. F. Strickland, Osce Goodwin, M. B. Templeton, Luther Dean, and H. I. Gahagan, copartners, engaged in the construction of electric railroads at Dallas, Tex., under the name of Southern Engineering & Construction Company. By complaint filed August 17, 1916, as amended, they allege that the charges collected by defendants on 44 mixed carloads of secondhand rails and angle bars shipped during November and December, 1912, and January, 1913, from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., were unreasonable and unduly prejudicial to the extent that they exceeded those that would have accrued at the rates subsequently established. They pray for reparation. A claim covering 44 cars, including 41 of the shipments in question, was presented informally to the Commission on May 1, 1914. The other three shipments are not identified by the same car numbers as those shown in the informal claim and apparently are barred by the statute of limitations.

The shipments, consisting of full carloads of rails mixed with less-than-carload lots of angle bars, moved between November 2, 1912, and January 6, 1913, both dates inclusive. The shipments from Cincinnati and from Lockland, which is within the switching limits of

Cincinnati and takes the same rates, moved by way of the Cincinnati, Hamilton & Dayton Railway in connection with the Chicago & Eastern Illinois Railroad to St. Louis, Mo. Those from Hamilton moved to St. Louis over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway and the Vandalia Railroad. All of the shipments moved from St. Louis to Ferris by way of the Frisco lines, the St. Louis-San Francisco, and the St. Louis, San Francisco & Texas railways, in connection with the Houston & Texas Central Railroad. Over the routes of movement Ferris is approximately 1,106 miles from Cincinnati and Lockland, and 1,080 miles from Hamilton. The following rates were legally applicable: A combination commodity rate of $7.20 per long ton, prior to November 7, 1912, and a joint commodity rate of $7 per long ton on and after that date, on the rails, and a joint fourth-class rate of $1.06 per 100 pounds, equivalent to $21.20 per net ton, on the angle bars.

Charges were collected on the basis of the above rates, except that a rate of $7.20 per long ton is alleged to have been charged on the rails contained in three shipments which moved from Cincinnati on November 8, 1912. Apparently the latter shipments were overcharged. In anticipation of the movement defendants requested special permission to publish the $7 rate on rails from and to these points. This permission was granted on October 26, 1912, but the rate did not become effective until November 7, 1912. No provision was made for mixed carloads of rails and angle bars. On January 7, 1914, defendants established a rate of $7.40 per net ton on less-than-carload lots of angle bars when loaded with full carloads of rails from Cincinnati and Lockland to Ferris, and, effective September 10, 1915, the same rate was made applicable from Hamilton to Ferris. On February 17, 1917, the rate on angle bars was increased to $7.54 per net ton. The rate on rails from and to these points has been continued in effect. The present rates are satisfactory to complainants and the claim for reparation presents the sole question for determination.

At the time of movement a rate of $9.20 per net ton applied on less-than-carload lots of angle bars when loaded with full carloads of rails from points of origin in the so-called Detroit-Cleveland territory to Ferris, and the rate on the rails was $7.40 per long ton. Detroit, Mich., is approximately 149 miles and Cleveland, Ohio, is approximately 197 miles more distant from Ferris than are Cincinnati, Hamilton, or Lockland. Defendants also maintained or participated in mixed carload rates of a similar character on like traffic from various other points in the same general territory of origin to Ferris. The St. Louis-San Francisco Railway admits that charges on the basis of the subsequently established rates would have been reason-

able and compensatory at the time of movement. No evidence was offered by any of the other defendants. There is no showing of undue prejudice.

We find that the charges legally applicable on the shipments were unreasonable to the extent that they exceeded those that would have accrued at rates of $7 per long ton on the rails and $7.40 per net ton on the angle bars. We further find that the complainants made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent that the charges paid exceeded those that would have accrued on the bases herein found reasonable; and that on shipments not barred by the statute of limitations they are entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and the complainants should prepare statements showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rates found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein. These statements should include any outstanding overcharges and should be submitted to the proper defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

That portion of Fourth Section Application No. 700 filed by agents F. A. Leland and J. F. Tucker, in which authority is sought to continue to charge on mixed carloads of rails and fastenings from Cincinnati, Hamilton, and Lockland to Ferris rates which are lower than those contemporaneously maintained on like traffic from or to intermediate points, were heard with this case. No evidence was offered by defendants in support of this application, and it will be denied to the extent that it is involved.

An appropriate order will be entered.

No. 9859.

CAROLINA PORTLAND CEMENT COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted December 17, 1917. Decided May 2, 1918.

Rate on lumber, in carloads, from Pace Junction, Fla., to Middlesborough, Ky., found to have been unreasonable. Reparation awarded.

A. J. Ribe for complainant.

Lee Clary for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Charleston, S. C. By complaint filed September 6, 1917, it alleges that the rate of 25 cents per 100 pounds charged by defendant on a carload of yellow-pine lumber shipped December 16, 1916, from Pace Junction, Fla., to Middlesborough, Ky., was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Birmingham, Ala. Rates are stated in cents per 100 pounds.

The shipment weighed 43,100 pounds and moved over defendant's line through Birmingham. Charges were collected in the sum of $107.75, at a local rate of 25 cents. The intermediate rates contemporaneously in effect over the route of movement were 8 cents to Birmingham and 13.5 cents beyond, a total of 21.5 cents. The fourth section departure was protected by an appropriate application. Effective December 16, 1917, the local rate was reduced to 21.5 cents, making it equal the aggregate of the intermediate rates to and from Birmingham. There is no allegation that the present rate is unreasonable.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Birmingham; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found rea-
---able; and that it is entitled to reparation in the sum of $15.08,
interest.

appropriate order will be entered.

No. 7992.

EMPIRE OIL WORKS ET AL.

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted December 29, 1915. Decided May 2, 1918.

Rates on petroleum and its products, in tank-car loads, from Reno, Pa., to Platteville, Mineral Point, and Lancaster, Wis., not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

C. D. Chamberlin for complainants.

R. H. Widdicombe for Chicago & North Western Railway Company and Chicago, Milwaukee & St. Paul Railway Company; *C. C. Wright* for Chicago & North Western Railway Company; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; and *O. E. Butterfield* and *Parker McCollester* for New York Central Railroad Company, Erie Railroad Company, and Chicago & Erie Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are A. L. Confer, an oil refiner at Reno, Pa., trading as the Empire Oil Works, and William W. Porter, a dealer in petroleum and its products at Lancaster, Wis. They allege that the rates charged by defendants for the transportation of numerous carloads of petroleum and petroleum products from Reno to Platteville, Lancaster, and Mineral Point, Wis., between April 30, 1913, and February 9, 1915, inclusive, were unreasonable and unduly prejudicial. We are asked to award reparation. The claims were seasonably filed. Rates are stated in cents per 100 pounds.

Reno is between Franklin and Oil City, Pa., and is served by the Erie and the New York Central railroads. The points of destination are in southwestern Wisconsin. Platteville is served by the Chicago & North Western and the Chicago, Milwaukee & St. Paul railways; Lancaster by the Chicago & North Western; and Mineral Point by the Chicago, Milwaukee & St. Paul and the Mineral Point & Northern railways. Prior to November 16, 1914, the rate on petroleum and its products from and to these points was 30 cents. On that date, following *The Five Per Cent Case*, 31 I. C. C., 351, it was increased to 31 cents.

The allegation of unreasonableness is supported solely by the comparisons set forth in the following table, showing rates on petroleum and its products, in carloads, from Reno to various points:

From Reno to—	Distance.	Rate.	Revenue per ton per mile.	Revenue per car-mile.[1]
	Miles.	*Cents.*	*Cents.*	*Cents.*
Mineral Point	660	31	0.939	17.7
Platteville	667	31	.930	17.5
Lancaster	694	31	.893	16.8
Winona, Minn	776	31	.799	15
Dubuque, Iowa	646	22.6	.700	13.2
Galena, Ill	644	22.6	.702	13.2
Warren, Ill	616	22.6	.734	13.8
Freeport, Ill	593	20.9	.705	13.3
Madison, Wis	609	22	.722	13.6
Appleton, Wis	664	24.5	.738	13.9
Oshkosh, Wis	645	24.5	.760	14.3
Fond du Lac, Wis	627	24.5	.781	14.7
Watertown, Wis	609	22	.722	13.6
Janesville, Wis	570	22	.772	14.5
Beloit, Wis	570	22	.772	14.5
Monroe, Wis	604	24	.795	15
Dale, Wis	677	27	.798	15

[1] Based on weight of 37,625 pounds per car.

Complainant Porter formerly received petroleum and its products in tank cars at Platteville, Mineral Point, and Lancaster, and distributed the same through the surrounding country in tank wagons and by less-than-carload shipments in barrels. At the present time he distributes only from Lancaster. In distributing oil throughout this territory he competes with dealers at Galena, Warren, Freeport, Rock Island, Ill., Monroe, Madison, and Dubuque, who, by reason of their lower rates from the east, could distribute in territory contiguous to his distributing stations at prices which he was not always able to meet, thus restricting his territory. He testified that during two or three years prior to the hearing he had been compelled to handle gasoline from the western oil fields instead of the eastern product, but this was due in part to the lower price of the western gasoline.

The defense is that the proper basis of rates on petroleum and its products from points east of Chicago, Ill., to points west thereof is the Chicago combination, and that this basis is adhered to except in particular instances where circumstances and conditions necessitate departures. This basis is said to be natural and logical because the eastern lines terminate at Chicago, where the western lines begin, and because traffic conditions east and west of Chicago are entirely dissimilar.

The basis of rates on oil from the east to the western portion of Wisconsin is the Chicago combination, but to Winona, Minn., approximately 47 miles north of the Minnesota-Iowa state line, and across the Mississippi River from Wisconsin, the carriers have, for competitive reasons, found it necessary to establish a lower basis of

rates. From Reno to Winona the Chicago combination on petroleum and its products, in carloads, is 35 cents, but the joint rate is 31 cents. This rate is blanketed back over all territory to which the Chicago combination would be higher, and the group thus formed includes the points of destination in question. The rates to Mineral Point and Platteville are 2 cents, and to Lancaster 4 cents, less than the Chicago combination. The rates to points east of this group are on the combination basis. With reference to rates to eastern Wisconsin points mentioned by complainant, defendants state that the western termini of certain eastern carriers are points on the west shore of Lake Michigan, such as Milwaukee, Manitowoc, and Kewaunee, Wis., to which points the Chicago rates are applied. In constructing rates beyond these ports there would ordinarily be a group of points surrounding each to which the local rates, and therefore the combinations, would be less than through any other port. To meet this situation the carriers take the lowest combination on any port and apply it through all ports, including Chicago, as a matter of equalization, which is said to account for the comparatively low rates through Chicago, distance considered, to the points referred to by complainants. The Illinois points referred to are in what is known as prorating territory, and the rates to these points are strongly influenced by those of eastern lines whose rails extend to Peoria, Ill., and St. Louis, Mo. In making rates to points in northern Illinois, upper Mississippi River crossings, and points in trans-Missouri territory over through routes composed of eastern lines to Chicago and western lines beyond, it was necessary in order to meet the competition of carriers reaching St. Louis and Peoria by their own rails to establish joint rates through Chicago less than combinations on that point. The Illinois Central Railroad, the most northerly line participating in Missouri River traffic from eastern territory, fixes the boundary of prorating territory. This road crosses the Mississippi River at Dubuque, to which point the joint rate by way of Chicago is less than the combination, and as Freeport, Warren, and Galena are intermediate to Dubuque, rates to those points must be made with relation to the rate to that crossing. Each of these points is also served by either the Chicago & North Western or the Chicago, Milwaukee & St. Paul, or both.

It is claimed that none of these influences affects the rates to the points of destination under consideration, and as tending to indicate the propriety of charging higher rates to those points than to Dubuque and intermediate points, defendants observe that in *Mid-Continent Oil Rates*, 36 I C. C., 109, we authorized rates from the midcontinent oil fields to Chicago territory, which includes Platteville, Lancaster, and Mineral Point, 7.5 cents higher than to Dubuque.

Defendants testified that these points are on branch lines and that the traffic density west of Madison is much less than in the territory east thereof, which in turn is much less than that on the lines east of Chicago. It also appears that the traffic in question invariably necessitates an empty car movement eastbound.

Prior to *The Mississippi River Case*, 28 I. C. C., 47, the rates assailed were approximately 4 cents higher than from Reno to the upper Mississippi River crossings, including Dubuque, and to Galena and Warren, points in northern Illinois. Following that decision the rates to upper Mississippi River crossings and points in northern Illinois were reduced approximately 4.5 cents, thus increasing the disparity between the rates to the points in question and to upper Mississippi River and northern Illinois points 8.5 cents. In that case we said that the effect upon the carriers' revenue of applying the then effective St. Louis basis of rates to the upper Mississippi River crossings would probably extend to northern Missouri, southern Minnesota, and southern Wisconsin. From this complainant urges that it was foreseen that under appropriate proceedings the rates to southern Wisconsin would have to be readjusted with reference to the reduced rates to upper Mississippi River crossings and points in northern Illinois. In *The Wisconsin Rate Cases*, 44 I. C. C., 602, which concerned a number of complaints with respect to the rates to and from Wisconsin points from and to the east, and which grew out of the decision in *The Mississippi River Case*, *supra*, we said:

> The circumstances and conditions which have been most strongly operative in requiring the maintenance of the present level of rates to the lower and upper Mississippi River crossings and to points in northern Illinois do not apply to transportation to the Wisconsin cities involved in this case and therefore have not exerted the same influence upon the rates to and from those cities. It has not been shown that the same rates per mile should be applied to those cities as to points in prorating territory. The differences in competitive conditions and other circumstances shown of record, however, do not justify the present large differences between the class rates applicable to and from points in northern Illinois and on the Mississippi River in Iowa, on the one hand, and those applicable to and from cities in southern Wisconsin, on the other.

We there prescribed class rates to Beloit, Janesville, Stoughton, Watertown, and Madison, southern Wisconsin cities, on a percentage basis over the New York-Chicago rates. Petroleum and its products are rated fifth class in both official and western classifications. Our decision in *The Wisconsin Rate Cases*, *supra*, resulted in fifth-class rates of 30.5 cents from Reno to Beloit, Janesville, and Watertown and 31.5 to Madison. The distance from Rockford to Beloit is 18 miles, and the fifth-class rate prescribed from Reno to Beloit was 7.9 cents higher than that to Rockford. By reason of the increase in the fifth-class rate to Rockford, following *The Fifteen Per Cent*

Case, 45 I. C. C., 303, this difference has been decreased to 3.5 cents. The distance from the nearest upper Mississippi River crossing or northern Illinois point to the destinations in question is greater than between Rockford and Beloit, and the distances from Chicago to the destinations in question are considerably greater than to the southern Wisconsin cities mentioned.

Upon the record we are of opinion and find that the rates assailed have not been shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 9524.

SWIFT & COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted December 15, 1917. Decided May 13, 1918.

Failure of defendants to make an allowance for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York, N. Y., not found to have been unlawful or unreasonable. Complainant not shown to have been damaged by the undue prejudice alleged and complaint dismissed.

R. D. Rynder for complainant.
John L. Seager and *Parker McCollester* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, AND AITCHISON.

BY DIVISIÓN 3:

Complainant is a corporation engaged in the packing-house business at Chicago, Ill. By complaint filed February 19, 1917, as amended, it alleges that defendants' tariff rules applicable to car-float service at the port of New York, N. Y., whereby complainant was compelled to bear the cost of unloading its export shipments of chilled and frozen beef from car floats to vessels' slings resulted in unlawful, unreasonable, and unduly prejudicial charges on certain shipments transported over defendants' lines from various points in the United States. It asks reparation.

The shipments consisted of frozen and chilled beef, in quarters, and whole dressed pigs, which were wrapped in muslin and burlap

and moved to the seaboard in refrigerator cars. The chilled meat was hung from racks attached to the top of the car, while the frozen meat was piled on the floor. At the seaboard the cars were placed alongside vessels by car floats. The shipper then carried the fresh meat from the cars and deposited it in the ship's sling by which it was lifted over the side of the vessel and deposited in the hold. It is for this service that complainant seeks an allowance of 12 cents per ton, minimum $2 per car, under the following tariff provision:

> Where consignors or consignees load or unload the cars, an allowance of 12 cents per ton, subject to a minimum of $2 per car, will be made for such loading or unloading, except on fresh meats in bulk, which the consignees will be required to unload from cars and on which no allowance for unloading shall be made on any quantity.

Complainant contends that "in bulk" includes only such commodities as are loose or in mass and must be shoveled, scooped, poured, or forked in the handling; and that the shipments in question were not "in bulk" but in packages. The interpretation of that phrase in its application to those shipments is the substantial issue in the case as both sides agreed upon the argument. On January 15, 1916, the rule quoted was amended by eliminating the exception as to fresh meat in bulk, and on December 1, 1916, was further amended so as to require the consignees or consignors to load or unload dressed meats, not boxed or crated, in carloads, in which event an allowance of 12 cents per ton, minimum $2 per car, will be made. As the present rule is satisfactory to complainant, the only question for consideration is reparation.

We are of the opinion that complainant's interpretation of the words "in bulk" is too technical. Had the term "fresh meats" alone been used the shipments clearly would have come within the exception. The words "in bulk" properly may be considered as surplusage, if read in the restricted sense suggested by the complainant, as fresh meat is rarely, if ever, shipped in such a way that it could be scooped, shoveled, or poured. While it is not established of record when the term "fresh meat in bulk" was first used in this tariff provision, the evidence shows it was in effect as far back as 1908; also that the term "fresh meat in bulk or boxes" prior to 1914 was carried in tariff provisions applicable to free car-float service at New York, without controversy as to its meaning.

We are of opinion that a fair interpretation of the tariff justifies the conclusion that the shipments came within the exception and that complainant was not entitled to an allowance for their unloading.

Complainant also contends that the failure to make the allowance on fresh meats resulted in the collection of unreasonable charges

for the reason that the line-haul rates were sufficiently high to include the published allowance. No evidence was introduced to show that the line-haul rates were unreasonable.

In *Swift & Co.* v. *N. Y., N. H. & H. R. R. Co.*, 44 I. C. C., 481, we said:

> In *Lighterage and Storage Regulations at New York, supra* [35 I. C. C., 47] the Commission expressed the opinion that carriers are justified in requiring shippers to load and unload freight to and from cars on floats when ordered and placed at vessels or outside piers. This rule is fundamental and generally may be regarded as expressing a sound principle, from which carriers will not be required to depart in the absence of special circumstances. The voluntary assumption by defendant of the obligation to perform the loading service in connection with nonperishable freight raises no presumption that its refusal to perform a similar service with respect to perishable freight is unreasonable.

We further find that the failure to make the allowance was not unreasonable. As the record does not contain the proof of damage necessary to support an award of reparation under a finding of undue prejudice, and as the present tariff rules are satisfactory to complainant, the question of whether defendants' failure to make the allowance requested on these shipments was unduly prejudicial need not be considered.

An order will be entered dismissing the complaint.

No. 9874.

AETNA EXPLOSIVES COMPANY
v.
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.

Submitted December 12, 1917. Decided May 2, 1918.

Rate on sulphuric acid, in carloads, from Fayville, Ill., to Ishpeming, Mich., found to have been and to be unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates contemporaneously in effect to and from Chicago, Ill. Reparation awarded.

George C. Reynolds for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are George C. Holt and Benjamin B. Odell, receivers of the Aetna Explosives Company, a corporation formerly engaged in the manufacture of explosives at New York, N. Y. By complaint filed September 12, 1917, as amended, they allege that the rate charged by defendants on five carloads of sulphuric acid shipped from Fayville, Ill., to Ishpeming, Mich., between October 17 and November 15, 1916, inclusive, were unreasonable and in violation of the rule of the fourth section in that it exceeded the aggregate of the intermediate rates to and from Chicago, Ill. They ask reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds.

The shipments, aggregating 392,600 pounds, moved over the Chicago & Eastern Illinois Railroad to Chicago and Chicago & North Western Railway beyond. Charges were collected in the sum of $1,609.66 at the joint fourth-class rate of 41 cents. The intermediate rates contemporaneously in effect on sulphuric acid in carloads were 10.5 cents from Fayville to Chicago and 15 cents from Chicago to Ishpeming, a total of 25.5 cents. This departure from the rule of the fourth section was protected by an appropriate application which was heard in another proceeding now pending. Defendants were not represented at the hearing.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates contemporaneously in effect to and

from Chicago; that the Aetna Explosives Company made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that George C. Holt and Benjamin B. Odell, receivers of the Aetna Explosives Company, are entitled to reparation in the sum of $608.53, with interest.

An appropriate order will be entered.

No. 9769.

ISAAC JOSEPH IRON COMPANY

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

Submitted November 13, 1917. Decided May 2, 1918.

Rate on scrap-iron rails, in carloads, from New Orleans, La., to Richmond, Va., found to have been and to be unreasonable. Reparation awarded.

Harry C. Barnes and *Lucien A. Dussol* for complainant.

Brent Arnold for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the scrap-iron business at Cincinnati, Ohio. By complaint filed June 18, 1917, it alleges that the rate of $6.86 per long ton charged by defendants on two carloads of scrap-iron rails shipped November 7, 1916, from Algiers, La., to Richmond, Va., was illegal, unreasonable, and unjustly discriminatory to the extent that it exceeded $4.50 per net ton. It asks reparation.

The shipment, weighing 207,200 pounds, consisted of worn-out scrap-iron rails, which were used for remelting purposes. They were purchased from Morgan's Louisiana & Texas Railroad & Steamship Company, f. o. b. New Orleans, La., to which point they were transported from Algiers deadhead as company material. They were

shipped from New Orleans to Richmond over the Louisville & Nashville and the Atlanta & West Point railroads, Western Railway of Alabama, and the Georgia and the Atlantic Coast Line railroads. Charges were collected in the sum of $634.54, at a joint commodity rate of $6.86 per long ton.

At the time the shipment moved defendants maintained a rate of $4.50 per net ton on scrap iron from New Orleans to Richmond, and complainant cited a rate of $4.30 per net ton contemporaneously applicable on scrap-iron rails from New Orleans to Youngstown, Ohio, and Sharon, Pa. The Louisville & Nashville, the only defendant represented at the hearing, expressed a willingness to establish a rate on old scrap-iron rails, unsuitable for relaying purposes, from New Orleans to Richmond not higher than the rate contemporaneously applicable on scrap iron from and to these points, and to make reparation on that basis.

We find that the rate charged was legally applicable, but that it was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the rate contemporaneously applicable on scrap iron, in carloads, from and to the same points. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $168.34, with interest.

An appropriate order will be entered.

No. 9880.

FORT SMITH COMMISSION COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 20, 1918. Decided May 2, 1918.

Rate on sweet potatoes, in carloads, from Dardanelle, Ark., to Joplin, Mo., found to have been unreasonable. Reparation awarded.

C. D. Mowen for complainant.

J. M. Souby for Kansas City Southern Railway Company and *Charles B. Hesse* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation, is engaged in the fruit and produce business at Fort Smith, Ark. By complaint filed September 18, 1917, it alleges that the rate of 27 cents per 100 pounds charged by defendants on two carloads of sweet potatoes shipped from Dardanelle, Ark., to Joplin, Mo., March 29 and 31, 1917, was unreasonable to the extent that it exceeded 22 cents. It asks reparation. Rates are stated in cents per 100 pounds.

The shipments, aggregating 57,466 pounds, moved over defendants' lines. Charges were collected in the sum of $155.16, at a commodity rate of 27 cents legally applicable. A rate of 22 cents formerly applied from and to the points in question. Early in 1916 defendants proposed, among other things, to increase this rate to 27 cents. The proposed increased rates were suspended in *Fruits and Vegetables*, 43 I. C. C., 291, until February 13, 1917, upon which date they became effective by expiration of our suspension order. In that proceeding we later found that the rate assailed had not been justified and ordered it canceled effective May 15, 1917. Since that date the 22-cent rate has been in effect.

We find that the rate assailed was unreasonable to the extent that it exceeded 22 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $28.73, with interest. An order awarding reparation will be entered, but as the rate found reasonable has been in effect for nearly a year no order for the future is necessary.

No. 9493.

WEST VIRGINIA RAIL COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted January 8, 1918. Decided May 7, 1918.

1. Rates on light steel rails in carloads from Huntington, W. Va., to New York, N. Y., Philadelphia, Pa., and Baltimore, Md., applied on shipments for domestic consumption, found to have been unreasonable to the extent specified in the report. Reparation awarded.
2. Rates on light steel rails in carloads from Huntington to the above eastern ports, when for export, not found to have been unreasonable, but found to have been unduly prejudicial. Reparation awarded.
3. Rates on light steel rails in carloads from Huntington to interior basing points not found unreasonable or unduly prejudicial.
4. Relationship established on light steel rails in carloads as between Huntington and Pittsburgh, Pa.

W. P. Tingley and *Willis H. Fowle* for complainant.
J. S. Patterson for Chesapeake & Ohio Railway Company.
Francis R. Cross for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DANIELS, *Chairman:*

The complainant, a West Virginia corporation, manufactures light steel rails at Huntington, W. Va. These rails have a maximum weight of 45 pounds per yard, but take the same rates, carloads, as standard rails. Rates are stated herein in amounts per long ton.

The complaint, which was filed February 2, 1917, alleges the rates on light steel rails in carloads from Huntington to New York, N. Y., and other Atlantic ports for export, and to New York and to other eastern basing points for domestic consumption to be in violation of sections 1, 2, and 3 of the act to regulate commerce; and that said rates in particular afford undue advantage to Pittsburgh, Pa., Cleveland, Lorain, Cambridge, Newark, and Youngstown, Ohio, and to Cumberland, Md. Reparation is asked on shipments moving for two years prior to the complaint. We are asked to prescribe for the future rates from Huntington to New York and other Atlantic ports that will not exceed rates contemporaneously in effect from Pittsburgh by more than 40 cents. This is the differential over Pittsburgh on eastbound shipments of rails to New York which has been obtained for some years from the Ohio points above named, with

the exception of Youngstown, which takes a differential of 20 cents over Pittsburgh. To the interior basing points the rates from all of the Ohio points above named are apparently the same as from Pittsburgh, and we are asked on brief, but not in the complaint, to prescribe for the future rates from Huntington to the interior basing points that will not exceed the rates contemporaneously maintained from Pittsburgh, Newark, Youngstown, and Lorain.

At the time complaint was filed, the rate from Huntington to New York, for export, was $3.16 and less by differentials of 40 and 60 cents to Philadelphia and Baltimore, respectively. The rate to New York on domestic shipments was $3.84, and less by so-called "split" differentials of 20 and 30 cents to Philadelphia and Baltimore, respectively.

Class rates from Huntington to New York bear a percentage relation of 87 per cent to the Chicago-New York class-rate scale. Steel rails are rated in official classification sixth class. The sixth-class rate from Huntington to New York is 26 cents per 100 pounds, or $5.20 per ton of 2,000 pounds, the same rate being applicable per long ton on rails. However, commodity rates on steel rails, lower than the sixth-class rates, have been in effect for many years from Chicago, Ill., from Pittsburgh and related points, and from Huntington to New York and related eastern points. Following *The Five Per Cent Case*, 32 I. C. C., 325, the domestic rates were increased: Chicago to New York, from $4.70 to $4.94; Huntington to New York, from $3.65, or slightly more than 77 per cent of the Chicago-New York rate, to $3.84. The domestic rate from Pittsburgh to New York became $2.76, or approximately 55.8 per cent of the Chicago-New York rate.

Prior to *The Five Per Cent Case*, the export rate from Chicago to New York was $3.15, or about 67 per cent of the domestic rate. At the same time the export rate from Huntington to New York was $3, or nearly 80 per cent of the domestic rate. Following *The Five Per Cent Case* the export rate from Chicago to New York was increased to $3.30, and that from Huntington to New York to $3.16.

In *Eastern Export Iron and Steel Case*, 43 I. C. C., 5, we permitted the withdrawal of special export rates from Pittsburgh and points east, but required the publication from Chicago of an export rate to New York, which should bear the ratio of 100 to 60, compared with the export rate thereafter effective from Pittsburgh to New York, and indicated that similar relationships on the export traffic affected should be established except as regards the points differentially related to Pittsburgh. Consequent adjustments were simultaneously made from related points. Although no change was made in the domestic rates then effective from Chicago and Huntington to New

York, the export rate from Huntington was increased, effective February 24, 1917, from $3.16 to $3.54, or to 77 per cent of the Chicago-New York rate.

The following statement shows the present domestic rates on new iron and steel rails from Huntington and the domestic rates from other points, all of which were continued in effect after the issuance of the report in the *Eastern Export Iron and Steel Case*, permitting cancellation of the export rates:

To—	From Huntington.	From Cumberland.	From Pittsburgh.	From Newark, Lorain.	From Chicago.	From Youngstown.
New York	$3.84	$2.56	$2.76	$3.16	$4.94	$2.96
Philadelphia	3.64	2.36	2.56	2.96	4.54	2.76
Baltimore	3.54	2.26	2.46	2.86	4.54	2.66
Albany	3.84	.....	2.76	2.76	4.94	2.76
Syracuse	3.52	.....	2.36	2.36	3.94	2.36
Utica	3.68	.....	2.56	2.56	4.40	2.56
Rochester	3.10	.....	2.10	2.10	3.70	2.10

The export rates, prior to February 24, 1917, were as follows:

To—	From Huntington.	From Cumberland.	From Pittsburgh.	From Newark, Lorian.	From Chicago.	From Youngstown.
New York	$3.16	$1.64	$1.84	$2.24	$3.30	$2.04
Philadelphia	2.76	1.44	1.64	2.04	2.90	1.94
Baltimore	2.56	1.34	1.54	1.94	2.90	1.74

The use of "split differentials" from all points except Huntington and Chicago, and of regular differentials from those points is disclosed by the above table. The export rates from Chicago to New York, following the *Eastern Export Iron and Steel Case*, became $4.60, and the rates to Philadelphia and Baltimore alike were made the regular or full Philadelphia-New York differential thereunder.

The rates from Huntington to the interior basing points, taking rates lower than the Atlantic seaboard cities, were and are made approximately on a basis of 82 per cent of the Chicago rates to these points, based on the Chicago-New York scale, with the rates to New York, made on the basis of 77 per cent of the Chicago-New York rate, as maximum. Under this basis the rates from Huntington to New York points were and are: To Albany, $3.84; Utica, $3.68; Syracuse, $3.52; and Rochester, $3.10.

Huntington lies on the south bank of the Ohio River in central freight association territory and is in an iron-producing section which includes Ashland, Ky., Ironton and Portsmouth, Ohio. While, as above recited, class rates from Huntington bear a percentage relation to the Chicago-New York class-rate scale, the basis

being 87 per cent, the carriers serving Huntington have accorded it in respect of commodity rates something less than the rates which result from that percentage relation; and from Huntington to Atlantic seaboard cities, on many commodities, have adopted a basis of 77 per cent of the Chicago-New York rates. However, the domestic rates from Huntington to the ports on light steel rails have never been published on that exact percentage, and it was not until February 24, 1917, following the *Eastern Export Iron and Steel Case*, subsequent to the filing of the complaint herein, that the export rates were so adjusted. At the time the complaint was filed the Huntington-New York export rate was related to the Chicago-New York export rate as 96 is to 100. If the export rate from Huntington to New York in effect prior to February 24, 1917, had been on a basis of 77 per cent of the Chicago-New York export rate, it would have been $2.54, or 70 cents over Pittsburgh. While the export rate from Huntington to New York was thus increased from $3.16 to $3.54, or 38 cents, the increase from Pittsburgh was from $1.84 to $2.76, or 92 cents. Corresponding increases of 92 cents were made from Newark and the Ohio points which carry a 40-cent differential over Pittsburgh.

Although Pittsburgh is in 60 per cent territory, Youngstown in 66½ per cent territory, Newark in 74 per cent territory, and Lorain in 76 per cent territory, their commodity rates on rails to New York are less than those percentages of the Chicago-New York rate. For example, the present export and domestic rate from Pittsburgh to New York is but 55.8 per cent of the present domestic rate from Chicago to New York; and the rates from the other related points to the ports are made differentials over Pittsburgh. Prior to February 24, 1917, the export rate on rails from Huntington to New York, notwithstanding the percentage relation of 77 per cent of the Chicago-New York rate applying on other commodities, was not related to the Pittsburgh rate or any other rate, and was, as the defendants admit, made arbitrarily.

The Chesapeake & Ohio serves Huntington as an initial carrier, but none of the other points of origin, except Chicago, which it reaches through the Chesapeake & Ohio Railway of Indiana. The Baltimore & Ohio Railroad is an initial carrier at all the points of origin alleged to be unduly preferred as well as at Huntington; the Pennsylvania Company or the Pennsylvania Railroad serves all the points as an initial carrier except Lorain and Huntington. Both the Baltimore & Ohio and the Pennsylvania railroads are participants in the joint rates from Huntington to the ports. The usual route for traffic from Huntington to New York, via the Chesapeake & Ohio, is to Potomac Yard, Va., and the Pennsylvania or Balti-

more & Ohio railroad thence to destination. The rates also apply via Basic, Va., Norfolk & Western Railway, Western Maryland Railroad, Philadelphia & Reading Railway, and the Central Railroad of New Jersey. The distances in miles from Huntington to New York are: 656, via the short line; 661, via the Chesapeake & Ohio, Potomac Yard, and the Pennsylvania; and 691, via the Baltimore & Ohio Railroad. From the other points of origin the distances in miles are: Cumberland, 419; Pittsburgh, 440; Newark, 598; Lorain, 612; and Chicago, 920.

Mills at Cumberland, Williamsport, and Newark make light rails of the same kind and by the same process as those manufactured by complainant. Complainant also competes in eastern territory with manufacturers of rails located at Pittsburgh. Light steel rails are not produced at Cleveland or Lorain. The mill at Cambridge has ceased operation. The selling price f. o. b. or f. o. s. New York of rails which competitors of Pittsburgh must meet is the Pittsburgh price plus the rate from Pittsburgh to New York.

Defendants contend that the rates from Huntington, compelled by the competition arising from the adjustment prevailing from Newark, Lorain, Pittsburgh, and other producing points, are low; that the density of traffic from the other points is far greater than that from Huntington; and that the circumstances and conditions surrounding transportation from the other points to the east are substantially dissimilar from those obtaining from Huntington.

In the summer of 1916 complainant shipped via the lines of the Chesapeake & Ohio and the Pennsylvania Railroad to New York, for export, between 5,500 and 6,000 tons of light steel rails. The rate charged on this shipment was $3.16, about 96 per cent of the contemporaneously maintained rate from Chicago to New York for export, and exceeding the rate from Pittsburgh to New York, for export, by $1.32. The Chesapeake & Ohio asserts that the $3.30 export rate from Chicago in which it participated was so low that 77 per cent thereof as a rate from Huntington was noncompensatory; and that an export rate of that character from Chicago to New York, occasioned by competition by lake and through the Erie Canal, with direct lines to the east by the New York Central or Pennsylvania, would not permit of according Huntington 77 per cent thereof.

Relatively, the export rates from Huntington to New York and other Atlantic ports were not aligned with other rates from rail-producing points, but there is nothing in this record upon which we can find that the rates from Huntington to Atlantic ports, for export, were intrinsically unreasonable.

Via the Chesapeake & Ohio Railway, from February 23, 1915, to February 24, 1917, the export rates from Chicago to New York,

Philadelphia, and Baltimore were, respectively, $3.30, $2.90, and $2.70; via the Baltimore & Ohio and Pennsylvania railroads, the same rates applied, respectively, from Chicago to New York and to Philadelphia, but the rate to Baltimore was made the same as that to Philadelphia. The export rates from Pittsburgh during the same period were, respectively, $1.84, $1.64, and $1.54.

The distance from Huntington to New York is materially greater than from Newark, the point most typical of the 40-cent differential over Pittsburgh which complainant alleges should be accorded Huntington; the influence of the iron and steel rate adjustment is not so strong at Huntington as at these Ohio points; and Huntington has not shown that it logically belongs to the group of points in Ohio alleged to be preferred. Consequently no sufficient reason appears why the group rates of 40 cents over Pittsburgh should be extended to Huntington.

Following the *Eastern Export Iron and Steel Case*, 43 I. C. C., 5, and *Pollak Steel Co.* v. *B. & O. R. R. Co.*, 49 I. C. C., 238, and on this record, we are of opinion and find that the export rates from Huntington to the Atlantic ports, during the period from February 2, 1915, until February 24, 1917, when the export rates were changed, were unduly prejudicial to the extent that the Huntington-New York rate exceeded 77–60ths of the contemporaneously maintained export rate in effect from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, respectively, under the rate to New York. We also find that complainant paid and bore the freight, has been damaged, and is entitled to reparation, with interest, on shipments made from Huntington to those ports, for export, during that period in the amount that the rates paid exceeded $2.36 per long ton to New York, $2.16 to Philadelphia, and $2.06 to Baltimore.

During the period February 23, 1915, to February 24, 1917, the domestic rates from Pittsburgh to New York, Philadelphia, and Baltimore were, respectively, $2.76, $2.56, and $2.46. We are also of opinion and find that the domestic rates from Huntington to the same ports are and were for two years prior to February 2, 1917, unreasonable to the extent that they exceed and exceeded 77-60ths of the contemporaneous domestic rates from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, respectively, under the rate to New York, i. e., $3.54, $3.34, and $3.24, using the "split differentials." We are also of the opinion and find that complainant paid and bore the freight, has been damaged, and is entitled to reparation, with interest, on shipments made to those ports for domestic consumption from February 2, 1915, in the amount of the difference between the domestic rates paid to the ports and 77-60ths

of the contemporaneous domestic rate from Pittsburgh to the port of New York, with differentials of 20 and 30 cents thereunder to Philadelphia and Baltimore, respectively.

The defendants proposed and would have published, effective May 31, 1917, from Huntington to the three Atlantic ports, on both export and domestic shipments, rates of $3.36, $3.16, and $3.06, based on 60 cents over the present export and domestic rate from Pittsburgh to New York, using the "split differentials" to Philadelphia and Baltimore. The rates were to be published not only from Huntington, but from the Ashland-Ironton district. This basis is slightly over 73 per cent of the present Chicago-New York export rate. This complaint is based largely on the fact that on this traffic certain points, instead of taking a percentage basis, are differentially related to the Pittsburgh rates. We are not persuaded that the extension of this specific differential basis over Pittsburgh is desirable.

We find a nonprejudicial relationship as between rates from Huntington and Pittsburgh on rails per long ton, export and domestic, for the future will require the Huntington rate to New York to be 77-60ths of the contemporaneous Pittsburgh rate to New York, and less by differentials to Philadelphia and Baltimore the same as contemporaneously applicable from Pittsburgh to the same points, respectively.

The record is too meager to afford a basis for a finding in respect of rates from Huntington to interior basing points.

The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. This statement should then be submitted to defendants for vertification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An order in conformity with the rate findings herein will be entered.

HALL, *Commissioner*, dissenting:

The evidence regarding reparation bore almost entirely on certain shipments made during the summer of 1916 from Huntington to New York for export which were complainant's share of an order for 8,000 tons of rail and appear to have been practically the only shipments from Huntington to the east. So far as the record shows complainant and the Sweet Steel Mill of Williamsport, Pa., were the only competitors for this order and complainant secured approximately three-fourths of it. The record does not disclose the price obtained or that the Williamsport rate was or is related to the Pittsburgh rate. While there are general statements that the delivered price of light steel rails at any point is determined by the price at Pittsburgh plus the

freight rate from Pittsburgh, complainant's principal witness testified, "There is no agreement as to price on light steel rails," and "as a consequence there is no established basis" for the price. The price is fixed "according to the competition that we meet," whatever the source may be. Different processes are used in manufacturing light rails at Huntington and at Pittsburgh, and it is not shown that the product at the two points is of the same kind or value. On behalf of complainant it is stated that—

> Complainant is not complaining of having to meet the competition of Williamsport and equalizing a reasonable rate from Huntington with the rate from Williamsport, but what we are complaining of is that we have got to shrink our profit 92 cents a ton before we can equalize that price. * * * We think that we are entitled to no reparation except that we have been overcharged by the transportation companies, and no more. * * * We have no complaint against the mills at Pittsburgh, as to freight charges.

The rates charged were not intrinsically unreasonable and it seems fairly obvious that complainant was not "overcharged by the transportation companies." Believing, as I do, that complainant has failed to show that it was damaged by defendants within the meaning of the act, I am constrained to dissent from the majority report in so far as it proposes to award reparation.

I am authorized by COMMISSIONER CLARK to say that he concurs in this dissent.

INVESTIGATION AND SUSPENSION DOCKET No. 1139.

LUMBER FROM ARKANSAS POINTS.

Submitted January 31, 1918. Decided May 9, 1918.

Proposed increased rates on pine and cypress lumber, in carloads, from certain points in Arkansas to Kansas City, Mo., Omaha, Nebr., and other western points found not justified. Suspended schedules ordered canceled.

Geo. E. Schnitzer for Chicago, Rock Island & Pacific Railway Company.

J. H. Townshend for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

By schedules filed to take effect September 20, 1917, respondents proposed to increase their joint commodity rates on pine and cypress lumber, in carloads, from certain main-line and branch-line stations in Arkansas, east of Little Rock, on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, to Kansas City, Mo., Omaha and Lincoln, Nebr., and other points in the same territory. Upon protest by the Southern Hardwood Traffic Association and others, these schedules were suspended until July 18, 1918. Rates are stated in cents per 100 pounds.

No effort was made by respondents to justify the proposed increased rates as reasonable in themselves. The Rock Island, the only respondent represented at the hearing, relied solely upon the attempt to remove existing fourth section departures. The rates on lumber from the southwest to Omaha and other points in the adjacent territory, including those sought to be increased in this proceeding, were approved in *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565, and other cases. In our report in the case cited, referring to the fourth section departures in rates from Arkansas points on the Rock Island, we said:

> One of the main lines of this system extends west from Memphis across the states of Arkansas and Oklahoma to El Reno, Okla., where it connects with its main north and south line, running from Topeka, Kans., to Dallas, Tex. The line from Memphis is intersected at various points in Arkansas by the lines of other carriers extending in a north and south direction, having distances from this territory to the Omaha group considerably less than the corresponding distances over the Rock Island. * * *

The Rock Island wishes to continue rates from Memphis, and junction points and local stations grouped therewith on its line east of Little Rock, the same in amount as those over the direct lines, while maintaining the present higher rates from Little Rock and other intermediate points. The highest rate from any intermediate point is 25 cents, or 3½ cents higher than from Memphis, which takes the lowest rate.

The route of the Rock Island is markedly circuitous. The relationship of rates which this road desires to continue does not appear to be unreasonable. Authority to meet the rates of the direct lines while maintaining higher rates from intermediate points will be granted upon condition that the present rates from such higher rated intermediate points are not increased and that rates from such points shall not exceed those which may be necessitated by our findings above in respect of rates from these points to destinations intermediate to the Omaha group.

Relief in accordance with those findings was granted by our Fourth Section Order No. 6315. The witness for the Rock Island testified that this order necessitated an almost entire revision of that line's rates on yellow-pine and cypress lumber, in making which some things were overlooked. The rates approved in that case had been established over new routes, one by way of Howe, Okla., Kansas City Southern Railway, Kansas City, and the Rock Island, and another by way of McAlester, Okla., Missouri, Kansas & Texas Railway, Kansas City, and the Rock Island. No fourth section application covering rates over those routes had been filed. It was decided to remove all fourth section departures by making the higher rates apply from all Arkansas points on the Rock Island east of Little Rock and by all routes. The lower rates to Kansas City and other points from Memphis, applying through Howe and McAlester, but not by the Rock Island's own line through El Reno, are still in force in violation of the fourth section, but it is stated to be the purpose of the Rock Island to change the basis at Memphis so that it will be the same as at the intermediate points in eastern Arkansas. This will mean an increase in the Memphis-Kansas City rate from 18 cents, the rate maintained by the short lines, to 24 cents. It was conceded that from Rock Island points 20 miles or less west of Memphis to Kansas City the combination of the present rates to and from Memphis in connection with the short lines is lower than the rates proposed from those points.

On behalf of the protestants it was shown that, while no pine lumber is produced along the line of the Rock Island between Memphis and Little Rock, considerable cypress lumber is produced and shipped to Kansas City, Omaha, and points in the same general territory. The existing fourth section violations result from the maintenance of higher rates from the Rock Island stations west of Mesa, Ark., to Little Rock than apply from Mesa and stations east thereof. No lumber is produced on the Rock Island west of Mesa, except at

Little Rock, which has a low rate on cypress lumber, and the fourth section departures could be removed by reducing the paper rates from those points without affecting the carriers' revenue. The rates on hardwood lumber to the same destination territory are blanketed from Memphis to Little Rock and are lower than the present rates on pine and cypress lumber.

We find that the respondents have failed to justify the proposed increased rates, and an order will be entered requiring the cancellation of the schedules under suspension.

INVESTIGATION AND SUSPENSION DOCKET No. 1137.

SOUTHEASTERN MANUFACTURED TOBACCO (No. 2).

Submitted March 15, 1918. Decided May 9, 1918.

Proposed increased rates on smoking tobacco, cigarettes, and plug tobacco from North Carolina points to central freight association territory found justified. Orders of suspension vacated.

R. Walton Moore and *M. P. Callaway* for respondents.
J. L. McNichol and *W. H. Lea* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By supplement No. 27 to J. J. Cottrell, agent, tariff I. C. C. No. 49 filed to become effective September 20, 1917, respondents proposed to increase the rates on tobacco from North Carolina points to central freight association territory. Protest was filed by Liggett & Myers Tobacco Company of St. Louis, Mo., against the increased rates, and they were suspended by appropriate orders until July 18, 1918.

Rates will be stated in cents per 100 pounds.

From March 1, 1904, to August 1, 1917, the rates on carload and less-than-carload shipments of smoking tobacco from Durham and Winston-Salem, N. C., to central freight association territory were

20 cents higher than from the Virginia cities. From November 1, 1906, to August 1, 1917, the rates on plug tobacco from the same originating points to the same territory of destination were 26 cents and 33 cents on carload and less-than-carload shipments, respectively, higher than the rates from the Virginia cities.

Tobacco moves from the Virginia cities to points in central freight association territory on class rates, and on August 1, 1917, these rates were increased approximately 15 per cent following the decision of the Commission in *The Fifteen Per Cent Case*, 45 I. C. C., 303. The rates on tobacco from the Virginia cities before and after August 1 to Chicago, Ill., Cincinnati and Cleveland, Ohio, and Indianapolis, Ind., are illustrative of the increases:

To—	Plug tobacco.		Smoking tobacco.	
	C. L.	L. C. L.	C. L.	L. C. L.
Chicago:				
Prior to August 1	30.8	45.5	45.5	62.8
After August 1	36	53	53	74
Increase	5.2	7.5	7.5	11.2
Cincinnati:				
Prior to August 1	27	39.7	39.7	57.6
After August 1	31.5	46	46	67.5
Increase	4.5	6.3	6.3	9.9
Cleveland:				
Prior to August 1	25.3	37.4	37.4	57.6
After August 1	29.5	43	43	66.5
Increase	4.2	5.6	5.6	8.9
Indianapolis:				
Prior to August 1	28.9	42.3	42.3	57.6
After August 1	33	49	49	67.5
Increase	4.1	6.7	6.7	9.9

The less-than-carload rates on smoking tobacco apply on cigarettes in any quantity.

The present and proposed rates on tobacco from the North Carolina points to the territory of destination were constructed by adding the differentials above stated of 26 cents and 33 cents, respectively, on plug tobacco and 20 cents on smoking tobacco to the rates from the Virginia cities. For example: The present rates from Durham to Chicago on plug tobacco are 56.8 and 78.5 cents on carloads and less than carloads, respectively. The proposed rates are 62 and 86 cents. The present rates on smoking tobacco from and to the same points are 65.5 and 82.8 cents, and the proposed rates are 73 and 94 cents. Both the present and the proposed rates are published as joint rates, and it is not contended that the decision in *The Fifteen Per Cent Case* contained any authority for the increased rates here proposed.

Class rates from the Virginia cities to central freight association territory are materially lower than the rates in the opposite direction. For example: The rates between the Virginia cities and Chicago on the four classes are as follows:

Between Virginia cities and Chicago.

Classes	1	2	3	4
Eastbound	87	76	57	39
Westbound	74	65	53	36

The distance from Richmond, a representative Virginia city, to Chicago is 904 miles. The rates authorized by the Commission in *The Fifteen Per Cent Case* and those prescribed for that distance in the *C. F. A. Class Scale Case*, 45 I. C. C., 254, are as follows:

	1	2	3	4
Rates	74	65	53	36
C. F. A. zone A scale, 904 miles	87.5	74.5	58.5	44
C. F. A. zone B scale, 904 miles	89.5	76	60	45
C. F. A. zone C scale, 904 miles	93.5	79.5	62.5	47
C. F. A. zone D scale, 904 miles	94.5	80.5	63.5	47.5

Plug tobacco is rated as third and fourth class and smoking tobacco as first and third class in less than carloads and carloads, respectively, in official classification. The record indicates that these commodities quite generally move on class rates in official classification territory.

The differentials by which the rates from Durham and Winston-Salem exceed the rates from the Virginia cities to central freight association territory are less than the local rates applicable from the Virginia cities to Durham. These rates are governed by the southern classification, in which plug tobacco is rated third class and smoking tobacco second class in both carloads and less than carloads. The second-class rate from Lynchburg to Durham is 42 cents, and the third-class rate 34 cents. These rates were prescribed by us in *Corporation Commission, North Carolina* v. *N. & W. Ry. Co.*, 19 I. C. C., 303.

The present rates on tobacco from points in central freight association territory to Durham are generally higher than the rates proposed from Durham in the opposite direction.

It thus appears that the relationship existing prior to August 1, 1917, between the rates on tobacco from the Virginia cities on the one hand and these Carolina points on the other, to points in central freight association territory is one of long standing, that this relationship was disturbed by the increases made in the rates from Virginia cities effective August 1 and that the relationship will be restored if the proposed rates become effective.

The protestant asserts that at the time of the hearing class rates and other commodity rates from points in the Carolinas to points in central freight association territory had not been increased to correspond to the increases made in rates in central freight association territory effective August 1, and contended that the effect of increasing rates on tobacco and not upon other commodities was to unduly discriminate against shippers of this commodity, and particularly against this protestant.

It was also shown that the through rates on leaf tobacco, in hogsheads, from Durham and Winston-Salem to the destinations involved prior to August 1, 1917, were usually constructed by combination of a commodity rate of 25 cents from the Carolina points to the Virginia cities with class rates beyond, and although the class rates from the Virginia cities have been increased, it is not proposed to increase the rates on leaf tobacco in hogsheads. It is shown that two sets of rates over different routes have been in existence from Carolina points to points in Pennsylvania, West Virginia, New York, and several points in Ohio, for some years. One set is carried in Cottrell, agent's, tariff and reflects the increases in class rates in territory north of the Virginia cities made subsequent to the so-called *Five Per Cent Case*. The other and lower set of rates is carried in a Norfolk & Western tariff and does not reflect the increases mentioned.

Rates on tobacco from the Virginia cities to points in Georgia, Alabama, Mississippi, and Tennessee are usually the same as from the Carolina points. This is also true as to rates to points in Iowa, Missouri, Kansas, Arkansas, and some western cities, among which are Denver, Colo., Salt Lake City, Utah, Santa Fe, N. Mex., Tucson, Ariz., Fargo, N. Dak., and Sioux Falls, S. Dak. Certain rates to Texas cities are lower from Durham than from the Virginia cities.

The revenue per ton-mile derived from the present and proposed rates on smoking tobacco from Durham and Winston-Salem to points in central freight association territory is compared with the revenue per ton-mile derived on like traffic from New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Richmond, Va., to the same points. The present rates from Durham and Winston-Salem to 8 of the 12 selected points result in slightly higher ton-mile earnings than the average of the rates from New York, Philadelphia, Baltimore, and Richmond, while the proposed rates would result in somewhat higher ton-mile earnings to all of the selected points than the average of the rates from the four cities named to the same destinations.

It is also asserted that in many instances the tobacco shipments of this protestant are loaded by its own employees.

The protestant therefore urges that the proposed rates on tobacco should be held to be unreasonable because: (1) The rates on classes

and other commodities from and to the same points have not been correspondingly increased; (2) the rates on leaf tobacco, in hogsheads, also constructed by combination on the Virginia cities, have not been increased; (3) the railroads have not availed themselves of the opportunity afforded by the decision in the *Five Per Cent Case* to increase the rates on tobacco to all points in central freight association territory; (4) the rates from Virginia cities to southeastern and western points which in some instances apply via routes through these North Carolina points are not higher than from North Carolina; (5) the present rates from these Carolina cities to points in central freight association territory yield a higher ton-mile revenue in the majority of instances than the rates from New York, Philadelphia, Baltimore, and Richmond; and (6) certain of the costs at point of shipment are paid by the protestant.

The rebuttal of the respondents to the claims of the protestant was to the effect that time and other duties had not permitted them to effect a revision of the rates on classes and other commodities from North Carolina to central freight association territory, but that the work was in progress and would be carried forward as fast as circumstances would permit. It was also testified that the only reason for not correcting the Norfolk & Western tariff carrying lower rates on tobacco from Carolina points to the destinations in Pennsylvania, West Virginia, New York, and Ohio, than were published in Cottrell's tariff was that the matter had been overlooked. It was also testified that it was the intention of the Norfolk & Western Railway Company to revise the rates on leaf tobacco, in hogsheads, to the basis of combination on the Virginia cities. It was stated that the reason why the rates from North Carolina to southeastern points are not lower than from the Virginia cities is that the latter rates are so low as to be less than reasonable as evidenced by the fact that they are lower than the rates from Cincinnati and other Ohio River crossings to equidistant southeastern destinations. The equality of rates between North Carolina points and the Virginia cities to western destinations is explained by the fact that there are routes to that territory via Memphis and lower Mississippi River crossings nearly as direct as routes through the Virginia cities. It was urged that the ton-mile earnings on freight from Durham and Winston-Salem to points in central freight association territory should properly be somewhat higher than from Richmond, Baltimore, Philadelphia, or New York, because the Carolina cities are on branch lines of the Norfolk & Western, while the four cities named are situated upon main lines. It is also stated that although certain less-than-carload shipments of tobacco are loaded by the protestant, these shipments must be rehandled by the carriers at the transfer points.

CONCLUSIONS PROPOSED.

1. There is a marked difference between the differential of 20 cents applying on smoking tobacco Carolina over the Virginia cities, and the differentials of 26 and 33 cents applying on plug tobacco, a lower rated commodity.

2. The carriers have justified the increased rates proposed on smoking tobacco.

3. The proposed increased rates on plug tobacco, in carloads or less than carloads, have not been justified.

ANDERSON, *Commissioner:*

The foregoing, with certain modifications not necessary to refer to, is the report proposed by the examiner. Exceptions to the proposed conclusion that the increased rates on plug tobacco, in carloads or in less than carloads, have not been justified were filed by the respondents.

Since the hearing and the service of the tentative report proposed by the examiner, we have rendered an order in *The Fifteen Per Cent Case*, wherein we permitted carriers to increase their joint rates from points in southeastern territory to points in official classification territory by amounts not exceeding the increases in the rates heretofore allowed to the carriers in official classification territory in *The Fifteen Per Cent Case* and the *C. F. A. Class Scale Case*, 45 I. C. C., 254. Nothing in this record warrants a different conclusion. We, accordingly, find that the respondents have justified the proposed increased rates. Our orders of suspension will, therefore, be vacated.

No. 9192.

WILSON & COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted March 15, 1917. Decided May 6, 1918.

Rates on hogs, in carloads, from Sioux Falls, S. Dak., to Chicago, Ill., found to have been and to be unreasonable. Reasonable maximum rate prescribed and reparation awarded.

Nuel D. Belnap, *Luther M. Walter*, and *John S. Burchmore* for complainant.

C. A. Lahey, *A. F. Cleveland*, *W. D. Burr*, and *O. W. Dynes* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business at Chicago, Ill., and is the successor in interest to Sulzberger & Sons Company. By complaint filed September 18, 1916, it alleges that defendants' rates on hogs, in carloads, from Sioux Falls, S. Dak., to Chicago were and are unreasonable to the extent they exceeded and exceed by more than 1 cent per 100 pounds the rates contemporaneously applicable from Sioux City, Iowa, to Chicago. These rates apply to shipments in either single or double deck cars. It asks reparation on shipments forwarded subsequent to May 13, 1914. The claim was presented to the Commission informally May 13, 1916. Rates are stated in cents per 100 pounds.

The shipments moved over either the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, the Illinois Central Railroad, or the Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter termed the Omaha, in connection with the Chicago & North Western Railway. It was testified that charges on most of the shipments which moved between May 13, 1914, and August 22, 1915, inclusive, were collected at a rate of 30 cents, legally applicable on hogs of a value not in excess of $10 each, and on the remainder at rates of 30.9 and 31.8 cents which were percentages of the 30-cent rate provided for application to hogs of different values higher than $10. The same percentages of increase applied in connection with shipments of hogs, of values greater than $10 each, from Sioux City

to Chicago. On October 15, 1915, the maximum value in connection with which the minimum rates from Sioux City and Sioux Falls would apply was increased from $10 to $15 per hog. Sioux Falls is 91 miles north of Sioux City, by way of the Milwaukee. The short-line distances from these points to Chicago are by way of the Illinois Central, 547 miles from Sioux Falls and 510 miles from Sioux City.

Complainant relies principally on *Daniels* v. *Chicago, R. I. & P. R. Co.*, 6 I. C. C., 458, wherein we found that the class rates from Chicago to Sioux Falls should not exceed 104 per cent of the corresponding class rates from Chicago to Sioux City. The rate on hogs from Sioux City to Chicago is 23.5 cents, 104 per cent of which is 24.4 cents. The 30-cent rate from Sioux Falls is approximately 127 per cent of the Sioux City rate. The class rates and most of the commodity rates between Sioux Falls and Chicago are approximately 104 per cent of the corresponding rates between Sioux City and Chicago. The relationship is departed from in the case of a few commodities because there is no appreciable movement or for some reason applying peculiarly to the commodity; for example, market competition in the case of coal. Defendants' rates on cattle from Sioux Falls and Sioux City to Chicago are 25 cents and 24.5 cents, respectively; on sheep, 30 cents from both points; and on packing-house products and fresh meats, 24.5 cents from the former and 23.5 cents from the latter. Defendants' rates on hogs are the same as their rates on packing-house products from Sioux City, Omaha, Nebr., and Kansas City, Mo., Missouri River points, to Chicago, viz, 23.5 cents, while from Sioux Falls to Chicago their rate on hogs is 5.5 cents higher than on packing-house products. The present and proposed rates from Sioux Falls to Chicago, together with the ton-mile and car-mile earnings thereunder, are compared below with the rates to the same destination from Missouri River points and the earnings thereunder:

To Chicago from—	Rate.	Short-line distance.	Ton-mile earnings.	Car-mile earnings.[1]
	Cents.	*Miles.*	*Mills.*	*Cents.*
Sioux Falls	[2] 30	547	10.97	9.32
Do	[3] 24.5	547	8.96	7.61
Sioux City	23.5	510	9.22	7.83
Omaha	23.5	488	9.63	8.20
Kansas City	23.5	454	10.35	8.80

[1] Based on 17,000 pounds, the minimum applicable to single-deck cars.
[2] Present rate.
[3] Rate sought.

Defendants contend that the rate assailed is intrinsically reasonable; that the *Daniels Case* is not in point because rates on live stock

were not in issue in that case; and that the evidence adduced by complainant does not show unreasonableness of the rate assailed but is directed toward the relationship between Sioux Falls and Sioux City. The Milwaukee concedes that the present spread is too great, but insists that any change in the relationship should be brought about by an increase in the rate from Sioux City and other Missouri River points, which rate, it is alleged, is too low. Defendants insist that our finding in the case cited was based on the difference in distance and that other conditions should be considered. Also that Sioux City is an important live-stock market and ships out a large volume of hogs and other live stock, whereas the outbound movement of hogs from Sioux Falls is limited to complainant's surplus after slaughter.

While only class rates were in issue in the *Daniels Case*, the carriers have recognized the propriety of the relationship therein prescribed as applied to practically all commodities, and there appears to be no good reason for excepting the rates on hogs. It was pointed out in that case that our finding was not based entirely upon the difference in distance, as will appear from the following excerpt:

> Other things being equal, it might well be held that the distance of Sioux Falls from Chicago would entitle it to rates from that point not materially different from those applied from Chicago to Sioux City. But the circumstances and conditions affecting the respective lines of transportation to these two towns appear to be unlike in some important particulars, and those differences are deemed sufficient, for the general reasons above suggested, to warrant us in allowing some difference in the rates now under consideration. Having regard, nevertheless, to the "degree of similarity" observed, we are convinced that relative equality requires a substantial modification of the present disparity, and indicates with a degree of certainty the measure of appropriate reduction in rates to Sioux Falls.

While the volume of traffic in hogs from Sioux Falls may not be as great as from Sioux City, it is considerable.

Defendants compare the rate assailed with rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, for the short-line distance of 547 miles, viz, 39 cents for a one-line haul and 41.5 cents for a two-line haul, and with rates of 26.7 cents for a single-line haul and 28.7 cents for a two-line haul prescribed in *Eastern Live-Stock Case*, 36 I. C. C., 675, for the same distance in central freight association territory. Comparison is also made with rates for comparable distances from country stations in South Dakota and Minnesota on the Milwaukee and the Omaha to Chicago, which are on approximately the same basis, distance alone considered, as the rate assailed.

Defendants state that a change in the Sioux Falls rate will necessitate a realignment of the rates from intermediate stations and also

from stations north and west of Sioux Falls, and argue that therefore no change should be made except upon a complete record in which every rate based or dependent upon the pivotal rate can be considered. We have repeatedly held that an unreasonable or unjustly discriminatory rate may not be allowed to stand merely because other rates will be affected by a change therein.

Complainant purchases its hogs at country stations tributary to Sioux Falls, and the price paid is based upon the Sioux City market price. It was testified that the product of complainant's hogs slaughtered at Chicago meets with competition from the products of hogs shipped at a rate of 23.5 cents from Sioux City and other Missouri River points to Chicago and there slaughtered, as well as with the competition of hog products shipped at a rate of 24.5 cents from Sioux Falls and 23.5 cents from the Missouri River points to Chicago. Complainant contends that the rate attacked is therefore unjustly discriminatory and unduly prejudicial. Defendants introduced an exhibit showing that the through rates from stations in South Dakota and Minnesota to Chicago, made up of the local rates to Sioux Falls, plus the rate assailed, are, generally speaking, lower than the through rates made up of the local rates from the same points to Sioux City plus the rate from that point to Chicago. We have uniformly held that a point is entitled to reasonable outbound rates regardless of the inbound rates. *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 41 I. C. C., 83, 118; *Iron Ore Rate Cases*, 41 I. C. C., 181, 214.

The rates assailed were published in terms of value until March 10, 1918, on which date the provision for different rates on "ordinary live stock," including hogs of the kind in question, depending on the value, was canceled. Since that date the 30-cent rate has applied from Sioux Falls and the 23.5-cent rate from Sioux City, irrespective of value. The maintenance by defendants of rates on ordinary live stock in terms of value subsequent to the amendment of the act by the Cummins amendment of August 9, 1916, was unlawful. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed by more than 1 cent per 100 pounds the rates contemporaneously applicable on like traffic from Sioux City to Chicago. We further find that subsequent to May 13, 1914, complainant made numerous shipments of hogs from and to the points in question and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with

interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. Our findings herein are without prejudice to the conclusions which may be reached in Docket No. 8436, *Live Stock and Products Case*, a more comprehensive proceeding now pending.

An appropriate order will be entered.

No. 9409.

PROCTER & GAMBLE COMPANY
v.
BOSTON & ALBANY RAILROAD COMPANY ET AL.

Submitted April 6, 1917. Decided May 2, 1918.

Rate on coconut oil, in carloads, from Boston, Mass., to Kansas City, Mo., found to have been unreasonable. Reparation awarded.

William H. McGuffey for complainant.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and *H. G. Settle* for Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the soap business at Cincinnati, Ohio. By complaint filed December 23, 1916, as amended, it alleges that the rate of 59 cents per 100 pounds charged by defendants on nine carloads of coconut oil, in casks, shipped September 13, 1913, from Boston, Mass., to Ivorydale, Ohio, a suburb of Cincinnati, reconsigned to Kansas City, Mo., was unreasonable to the extent that it exceeded 37 cents, the rate subsequently established. It asks reparation. The claim was presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The shipments moved under one bill of lading and as routed by complainant over the Boston & Maine Railroad to Rotterdam Junction, N. Y.; New York Central lines to Buffalo, N. Y.; Lake Shore & Michigan Southern Railway to Cleveland, Ohio; Cleveland, Cincinnati, Chicago & St. Louis Railway to Ivorydale; Baltimore & Ohio Southwestern Railroad to East St. Louis, Ill.; and Chicago, Rock Island & Pacific Railway beyond. Freight charges were collected in the sum of $1,569.44 at the applicable combination rate of 59 cents, composed of an import commodity rate of 20 cents, based on 266,060 pounds, from Boston to Ivorydale; a fifth-class rate of 15 cents, governed by the official classification, based on 265,980 pounds, from Ivorydale to East St. Louis; and a fourth-class rate of 24 cents, governed by the western classification, based on 265,980 pounds beyond, plus charges of $27 for reconsigning at Ivorydale and $63 for switching by the Ivorydale & Mill Creek Valley Railroad.

Six of the carloads weighed less than the prescribed minimum of 30,000 pounds. Defendant's tariffs covering the movement to Ivorydale were governed by exceptions to the official classification and provided for the assessment of charges on the actual weight of the entire consignment, regardless of the number of cars necessary for its transportation. The movement from Ivorydale to East St. Louis was governed by the official classification requiring that the carload minimum weight should be charged for each full carload unless actual weight would be greater than the minimum weight, when actual weight should be charged, and the part carload remaining over should be charged at actual weight and carload rate. The movement beyond East St. Louis was governed by exceptions to the western classification, which required that the first car or cars should be loaded to their full visible capacity, subject to established rules for minimum weight, the actual weight of the balance to be charged for at the carload rate. There is therefore an outstanding undercharge.

Contemporaneously with the movement of the shipment an agency tariff carried a rate of 37 cents on coconut oil in carloads in cases over various routes from Boston to Kansas City through Cincinnati, but due to an error of the publishing agent this rate was not made applicable over the Baltimore & Ohio Southwestern in connection with the Boston & Maine as an originating carrier, notwithstanding the fact that the Baltimore & Ohio Southwestern had previously authorized the filing of its concurrence in connection with the Boston & Maine. The distance over the route traveled is 1,559 miles as compared with 1,581 miles over another available route in connection with the Boston & Albany, over which the 37-cent rate applied.

Effective August 8, 1914, the Baltimore & Ohio Southwestern was made a participating carrier in the tariff containing the joint rate of 37 cents from Boston to Kansas City over the route of movement. This rate was subsequently increased to 39 cents, the reasonableness of which is not questioned. Defendants admit that the 59-cent rate charged was unreasonable and express their willingness to make reparation.

We find that the charges legally applicable were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 39 cents per 100 pounds, based on 266,060 pounds, plus a reconsigning charge of $3 per car at Ivorydale and $63 switching charges; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of $531.81, with interest. The undercharge above mentioned may be waived.

An order awarding reparation will be entered.

No. 9817.

NATIONAL LUMBER COMPANY
v.
ALABAMA, FLORIDA & SOUTHERN RAILROAD COMPANY ET AL.

Submitted December 12, 1917. Decided May 2, 1918.

Demurrage found to have lawfully accrued at Evansville, Ind., on a carload of lumber shipped from Malone, Fla., reconsigned to Rockford, Ill., and the charges assessed not shown to have been unreasonable. Complaint dismissed.

A. J. Ribe for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are George W. Adams, A. D. Adams, and S. E. Adams, copartners, engaged in the lumber business at Andalusia, Ala., under the name of National Lumber Company. By complaint filed August 8, 1917, they allege that the demurrage charges assessed at Evansville, Ind., on a carload of lumber shipped December 1, 1916, from Malone, Fla., to Evansville and reconsigned thence to Rockford, Ill., were unreasonable. They ask reparation. Rates are stated in cents per 100 pounds.

After the shipment arrived at Evansville complainants ordered it reconsigned to Hamilton, Ohio, at the joint rate. The Louisville & Nashville Railroad Company, the delivering carrier, declined to comply, and, upon receipt of advice to that effect complainants ordered the shipment reconsigned to Rockford at the joint rate. It was accordingly moved to Rockford, where charges were collected aggregating $159.99, which included transportation charges at a rate of 26.5 cents per 100 pounds, $5 reconsigning charge, and $5 demurrage at Evansville.

The Louisville & Nashville's reconsigning tariff, I. C. C. A-13533, applicable in connection with the above shipment, provides for reconsignment at the joint rate from point of origin to ultimate destination, plus a reconsigning charge of $5, subject to certain conditions, one of which follows:

> Provided * * * that shipments move over routes via which through rates and divisions are established from original point of shipment to final destination via the point at which reconsignment is made.

Complainants testified that there was a joint rate to Hamilton through Evansville and that defendants' refusal to reconsign the shipment to Hamilton at the through rate was on the ground that there were no divisions established by that route. We have uniformly condemned tariff provisions which make the application of a rate by a certain route dependent upon the existence of divisions by that route, and the provision quoted above is, in that respect, indefinite, ambiguous, and unlawful and should be promptly corrected.

An examination of the tariffs on file with us discloses that at the time of movement there were no joint rates from Malone to either Hamilton or Rockford, due to our order in *Southeastern Lumber*, Investigation and Suspension Docket No. 745, 42 I. C. C., 548, suspending in part the supplement in which the joint rates were carried from Malone. The lowest combinations were 29.7 cents to Hamilton and 29.5 cents to Rockford, made up in each case of 5 cents to Ardilla, Fla., and the balance beyond. It therefore appears that there is an outstanding undercharge on this shipment. Since there was no joint rate in effect from Malone to Hamilton, defendants could not lawfully have complied with complainants' order.

We find that demurrage lawfully accrued and that the charges assailed are not shown to have been unreasonable.

An order dismissing the complaint will be entered.

No. 9889.

FORT SMITH COMMISSION COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 12, 1918. Decided May 2, 1918.

Rate on potatoes, in carloads, from Grand Forks, N. Dak., to Spiro, Okla., found to have been and to be unreasonable. Reparation awarded.

C. D. Mowen for complainant.

J. M. Souby for Kansas City Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale fruit and vegetable business at Fort Smith, Ark. By complaint filed September 18, 1917, it alleges that the rate charged by defendants for the transportation in January, 1917, of a carload of potatoes from Grand Forks, N. Dak., to Spiro, Okla., was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Kansas City, Mo. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipment moved over the Northern Pacific Railway to Minnesota Transfer, Minn., Chicago, Rock Island & Pacific Railway to Kansas City, and Kansas City Southern Railway beyond, 1,121 miles. Freight charges were collected in the sum of $219.60 at a joint rate of 61 cents, based on a weight of 36,000 pounds. The intermediate rates contemporaneously in effect over the route of movement were and are 28 cents to Kansas City and 25 cents beyond, a total of 53 cents. This departure from the fourth section was and is protected by an appropriate application which was heard February 26, 1917, in another proceeding now pending.

Counsel for the Kansas City Southern calls attention to the fact that a proposed increase in the component from Grand Forks to Kansas City is now pending before us in Investigation and Suspension Docket No. 1151, and urges that if this proposed increase is found to have been justified the presumption of unreasonableness

of the joint rate charged to the extent that it exceeded the contemporaneous aggregate of intermediate rates subject to the act will have been rebutted, and that reparation should be awarded on basis of the increased combination. The subsequent increase in one of the components of a combination rate does not of itself justify a joint rate formerly in excess of the aggregate of the intermediate rates.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the aggregate of the intermediate rates subject to the act contemporaneously in effect over the route of movement. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $28.80, with interest.

An appropriate order will be entered.

No. 9545.[1]

ELIZABETHTON FLOORING COMPANY

v.

EAST TENNESSEE & WESTERN NORTH CAROLINA RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 458, 1024, 1478, 1479, 1530, 1548, 2029, AND 4144.

Submitted May 18, 1917. Decided May 2, 1918.

1. Rates on maple lumber and maple flooring, in carloads, from Elizabethton and Roan Mountain, Tenn., to certain points in Georgia, Florida, and South Carolina not found unreasonable. Complaints dismissed.
2. Fourth section relief denied.

George L. Forester for complainants.

Alex. M. Bull for Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Southern Railway Company; Georgia, Southern & Florida Railway Company; Nashville, Chattanooga & St. Louis Railway; and Atlanta & West Point Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

These cases are related and will be disposed of in one report.

The complainant in No. 9545 and Sub-Nos. 1 and 2, and in Nos. 9546 and 9547 is a corporation engaged in the lumber business at Elizabethton, Tenn. By complaints filed December 7, 1916, and February 8, 1917, it alleges that the rates charged on various carloads of maple lumber and maple flooring shipped from Elizabethton to points in Georgia, Florida, and South Carolina, between May, 1915, and June, 1916, were illegal, unreasonable, and in violation of the long-and-short-haul rule of the fourth section. The complainant in No. 9546 (Sub-No. 3) is an individual engaged in the lumber business

[1] The report also embraces No. 9545 (Sub-No. 1), Same *v.* East Tennessee & Western North Carolina Railroad Company et al.; No. 9545 (Sub-No. 2), Same *v.* East Tennessee & Western North Carolina Railroad Company et al.; No. 9545 (Sub-No. 3), W. Granville Taylor *v.* East Tennessee & Western North Carolina Railroad Company et al.; No. 9546, Elizabethton Flooring Company *v.* East Tennessee & Western North Carolina Railroad Company et al.; and No. 9547, Same *v.* East Tennessee & Western North Carolina Railroad Company et al.

at Asheville, N. C. By complaint filed April 2, 1917, he alleged that the rate charged by defendants on a carload of maple lumber shipped June 5, 1915, from Roan Mountain, Tenn., to Marietta, Ga., was unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation and reasonable rates are asked. Rates are stated in cents per 100 pounds.

No. 9545 and Sub-Nos. 1 and 2 relate to three carload shipments which moved from Elizabethton to East Point and Rome, Ga., and Jacksonville, Fla., respectively. These shipments, together with the one described in No. 9545 (Sub-No. 3) moved over the East Tennessee & Western North Carolina Railroad to Johnson City, Tenn., and beyond as follows: To East Point, over the Carolina, Clinchfield & Ohio Railway and the Carolina, Clinchfield & Ohio Railway of South Carolina to Spartanburg, S. C., Southern Railway to Atlanta, Ga., and the Central of Georgia Railway to destination, 366 miles; to Rome, over the Southern all the way, 266 miles; to Jacksonville, over the Southern to Macon, Ga., and the Georgia, Southern & Florida Railway beyond, 688 miles; and to Marietta, over the Southern to Dalton, Ga., and the Nashville, Chattanooga & St. Louis Railway through Cartersville, Ga., to destination, 321 miles. The rates legally applicable were combination rates composed of rates of 2 cents and 4.6 cents from Elizabethton and Roan Mountain, respectively, to Johnson City, and beyond, as follows: To East Point, 16⅔ cents, composed of 15 cents to Atlanta and 1⅔ cents beyond; to Rome, 14 cents; to Jacksonville, 21 cents, composed of 12 cents to Atlanta and 9 cents beyond; and to Marietta, 17.73⅓ cents, composed of 14.4 cents to Cartersville and 3⅓ cents beyond. The shipments to East Point and Jacksonville were overcharged 65 cents and $1.61, respectively, and the shipment to Marietta was undercharged $12.83.

At the time of movement, rates of 12, 10, 19, and 13⅓ cents were maintained to East Point, Rome, Jacksonville, and Marietta, respectively, from Bristol, Tenn., to which Johnson City is intermediate over the routes of movement. Complainants contend that the charges collected were unreasonable to the extent that the components beyond Johnson City exceeded the rates contemporaneously in effect from Bristol. On July 25 and August 10, 1916, defendants established rates from Johnson City the same as those in effect from Bristol to these destinations, which resulted in rates of 14, 12, and 21 cents from Elizabethton to East Point, Rome, and Jacksonville, respectively, and 17.93⅓ cents from Roan Mountain to Marietta. Complainants seek reparation upon the bases of these subsequently established rates, but introduced no evidence to show that the rates legally applicable were intrinsically unreasonable.

Defendants asserted that the legally applicable rates were not unreasonable and cited in comparison numerous rates, of which the following are representative:

From—	To—	Distance.	Rate.
		Miles.	*Cents.*
Fulton, Ala	Cincinnati, Ohio	663	21.5
Bogalusa, La	Bolligee, Ala	277	15
Ridersville, Ala	Columbus, Ga	168	14
Do	Macon, Ga	209	14
Laurel, Miss	Trussville, Ala	224	17
Do	Springville, Ala	237	17
Lumber City, Miss	Anniston, Ala	286	14

We find that the rates assailed are not shown to have been unreasonable. The charges should be adjusted in accordance with the rates legally applicable.

No. 9546 relates to two carloads of maple flooring shipped from Elizabethton to Hogansville, Ga., in February and June, 1916, and No. 9547, to a carload of maple lumber shipped from Elizabethton to Norris, S. C., in July, 1915. The shipments moved over the East Tennessee & Western North Carolina to Johnson City; Carolina, Clinchfield & Ohio, and Carolina, Clinchfield & Ohio Railway of South Carolina to Spartanburg; and beyond, the one to Norris over the Southern to destination, a total distance of 221 miles, and the two to Hogansville, over the Southern to Atlanta, and the Atlanta & West Point Railroad to destination, a total distance of 405 miles. The rate legally applicable on the Hogansville shipments was 18½ cents, composed of 15 cents to Newnan, Ga., and $7.50 per car of 24,000 pounds, excess in proportion, equal to 3⅛ cents per 100 pounds, beyond. Charges were collected on the shipment which moved in February at the legally applicable rate. The shipment which moved in June was undercharged 10 cents. Charges were collected on the Norris shipment at a joint rate of 16 cents legally applicable.

At the time of movement joint rates of 15.5 and 16 cents were maintained from Elizabethton to LaGrange, Ga., and Seneca, S. C., respectively. LaGrange is 13 miles beyond Hogansville, and Seneca, 17 miles beyond Norris. Over the respective routes of movement Hogansville is intermediate to LaGrange, and Norris to Seneca.

In support of its contention complainant relies solely on the departures from the long-and-short-haul rule of the fourth section which were protected by appropriate applications heard with these cases.

Defendants contend that the rates assailed are not unreasonable *per se* and offered numerous comparisons showing that they are in accord with the general level of rates on lumber which apply on flooring in southern territory.

We find that the rates assailed are not shown to have been or to be unreasonable, and the complaints will be dismissed.

Those portions of defendants' fourth section applications in which authority is sought to continue rates on maple lumber from Elizabethton to East Point, Rome, Jacksonville, and Seneca lower than the rates contemporaneously applicable on like traffic from and to intermediate points; and from Roan Mountain to Atlanta lower than to Marietta and from or to other intermediate points; and on maple flooring from Elizabethton to LaGrange lower than the rates contemporaneously applicable on like traffic to Hogansville and from or to other intermediate points, were heard with these cases. Defendants offered no evidence in support of their applications. They state that their rates on lumber throughout the southeast are in process of a general revision in line with *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and request that no fourth section orders be entered in these cases. The applications will be denied and the effective date of our order will be the same as that in the case cited.

Appropriate orders will be entered.

No. 9554.

TERRE HAUTE PAPER COMPANY

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted July 25, 1917. Decided May 2, 1918.

Rates charged on baled straw, in carloads, from Sikeston and related points in Missouri to Terre Haute, Ind., found to have been unreasonable prior to September 30, 1915, and illegal thereafter. Reparation awarded.

Isaac Born, *A. B. Cronk*, and *Born, Ritchey & Cronk* for complainant.

Frank E. Webster for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation, manufactures strawboard and box board at Terre Haute, Ind. It alleges by complaint filed February 19, 1917, that an unreasonable and illegal rate was charged by defendants on 42 carloads of baled straw shipped between June 10 and October 28, 1915, inclusive, from Sikeston, Oran, McMullin, and Matthews, Mo., to Terre Haute. It asks reparation upon the basis of a rate of $27 per car, which rate complainant contends was legally applicable.

The shipments moved over defendants' lines through Thebes, Ill., and charges were collected at a combination commodity rate of 17.5 cents per 100 pounds, composed of commodity rates of 8 cents to Thebes and 9.5 cents beyond, the carload minimum applicable in connection with each of the components being 20,000 pounds for cars 36 feet in length. The rate from Oran to Thebes was 7.5 cents, so that on this basis the shipments from Oran were overcharged one-half cent per 100 pounds.

On July 1, 1912, a rate of $27 per car was established from and to these points, and was in force immediately prior to the movement of these shipments. Effective December 1, 1914, defendants sought to increase this rate to $31 per car, but the schedules were suspended. On June 10, 1915, while these schedules were under suspension, defendants canceled the $27 rate, leaving in effect the combination on Thebes. The order suspending the proposed rate was vacated on

September 30, 1915, and the $31 rate became effective on that date. Subsequently the defendants filed two separate tariffs naming a rate of $27 per car. The proposed effective dates of these tariffs were October 28 and November 15, 1915, respectively, and the proposed dates of expiration November 15 and December 31, 1915, respectively. Neither provided for the cancellation of the $31 rate then in effect, and the rates respectively named therein did not supersede that rate. Effective February 15, 1916, defendants filed a schedule canceling the $31 rate and again providing for the application of the Thebes combination, then 16.5 cents. On October 1, 1916, per car rates were reestablished applicable by way of Chaffee, Mo., of $33 for cars 38 feet and under in length and $36 for cars over 38 feet in length. The present rate, established on March 20, 1917, is $33 per car any size. It therefore appears that the combination rate was legally applicable to the shipments which moved prior to September 30, 1915, but that the $31 rate was legally applicable to the shipments moving thereafter.

Complainant contends that the $27 rate was the legal rate because the publication of a rate in excess thereof while the $31 rate was under suspension was in violation of rule 9 (k) of Tariff Circular 18-A. This rule then provided that—

> No change may be made in a tariff or supplement which has been suspended in its entirety, except by special permission of the Commission.

The change effected in the then existing rate was in violation of our tariff rules and of the spirit of the suspension order, but the $27 rate was not legally in effect when the shipments moved.

It is further contended that $27 was the legal rate because defendants' tariffs publishing the increased rate were not posted in the stations of the St. Louis-San Francisco Railway at the Missouri points named. Complainant's only evidence in support of this view is that in response to numerous inquiries made by it of that carrier's local agents at the points named it was advised that no tariffs naming an increased rate had been received. This contention is without merit. Failure to post tariffs as required by law, though it may subject carriers to penalties, does not invalidate the tariff when it has been properly filed with us. *Buren* v. *Southern Pacific Co.*, 26 I. C. C., 332.

The charges collected were in excess of those that would have accrued at the $27 rate, and as the rate complained of therefore represents an increase subsequent to January 1, 1910, the burden of justifying it rests upon the defendants.

In the spring of 1912 there was a shortage of straw in the territory contiguous to Terre Haute. Defendants stated that the $27 rate was a low rate established as an emergency measure to permit

complainant to obtain a supply from Missouri; that they have made numerous efforts to eliminate the per car basis and to substitute therefor rates published in cents per 100 pounds; and that they do not desire to participate in business at the per car rate after complainant's exising contracts expire.

Upon the facts of record we find that defendants have not justified the rates charged and that on the shipments moving prior to September 30, 1915, the rates applicable were unreasonable to the extent that they exceeded $31 per car, and that on those moving from that date to and including October 28, 1915, the rates charged were illegal to the extent that they exceeded $31 per car. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and legal; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed, the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and legal and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

Complainant appears to be satisfied with the present rate of $33 per car, which has been in effect for more than a year. No order for the future will therefore be necessary.

No. 9796.

DIAMOND COAL & COKE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted April 21, 1918. Decided May 9, 1918.

The coal rate adjustment from mines in Pennsylvania to "short-haul territory," as herein described, is shown to be unduly preferential of Alicia, Bridgeport, Pike, and Braznell, and unduly prejudicial of Diamond. The rates from Diamond should not be higher than those contemporaneously maintained from the other mines here mentioned.

John F. Lent for complainant.
William W. Collin, jr., for defendants.

REPORT OF THE COMMISSION.

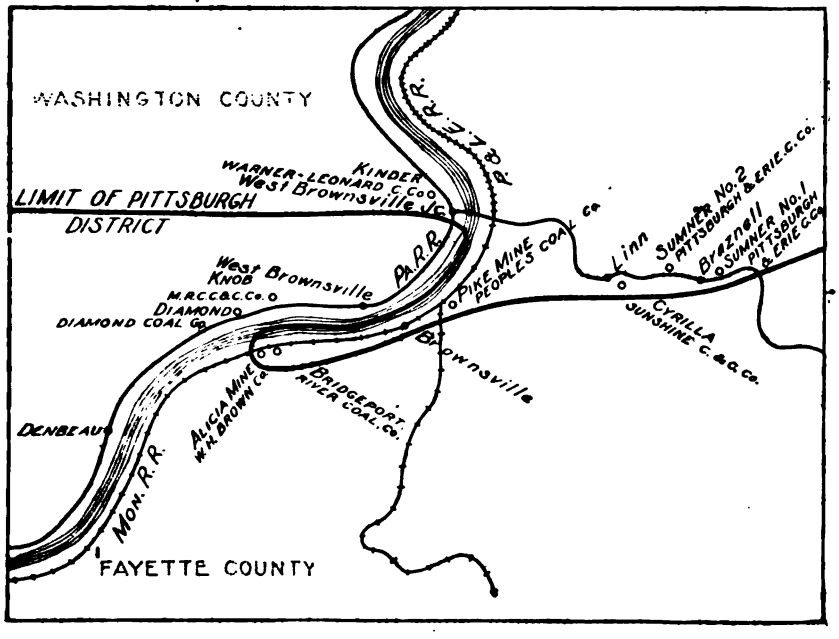
DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

The complainant operates a coal mine at Diamond, Pa., on the Pennsylvania Railroad, about 2.1 miles south of West Brownsville Junction, on the west bank of the Monongahela River. From this mine, to what is spoken of on the record as "short-haul territory," more particularly described in the margin,[1] the rates on coal are differentially higher, by from 6 to 10 cents a ton, than the rates contemporaneously maintained from near-by mines in the Pittsburgh group; those specifically mentioned being at Alicia, Bridgeport, and Braznell. Upon the ground that these differences are unduly prejudicial, the complainant is here seeking the establishment of the Pittsburgh group rates from its Diamond mine. An allegation in the complaint that the rates from this mine are intrinsically unreasonable was withdrawn at the hearing.

From west to east the southern boundary of the Pittsburgh group, as it is at present adjusted in relation to the destination territory involved, strikes the west bank of the Monongahela River at West Brownsville Junction, crosses the river at that point, and thence runs in a southwesterly direction from Brownsville Junction along the east bank of the river to and including Alicia, which is 1 mile south of Diamond. At Alicia the boundary line turns back sharply, extending in a northeasterly direction through Braznell, which is

[1] Short-haul territory, as described upon the record, includes Buffalo, Rochester, and Pittsburgh on the east, and is bounded on the west by a line running in a southeasterly direction from Lorain, Ohio, through Orrville.

about 4 miles east of West Brownsville Junction. Immediately north of Alicia, and directly across the river from Diamond, is the Bridgeport mine. From all these mines, to short-haul territory, the traffic passes through West Brownsville Junction; and from all of them, excepting the Diamond mine, the Pittsburgh group rates are now maintained. Geographically the situation is more clearly defined in the subjoined sketch:



In 1905 the southern boundary of the Pittsburgh group was adjusted so as to exclude Pike, Bridgeport, and Alicia. In other words, the loop was not there. About three years later, by competitive influences, the line was extended southward to include Bridgeport. In 1916 the Alicia mine complained of discrimination in favor of Bridgeport. The complaint was sustained and the discrimination ordered removed. *Brown* v. *Vandalia R. R. Co.*, 41 I. C. C., 317. In complying with this order the carriers chose to include Alicia in the Pittsburgh group. They now oppose any further extension southward of this group, on the ground that it already is too large, considering the short hauls to the destination territory involved. Diamond, however, as before explained, is 1 mile north of Alicia.

As between the Diamond mine on the one hand and the Bridgeport and Alicia mines on the other hand, the defendants acquiesce in the complainant's contention that there is a discrimination; and to eliminate it they propose to readjust the southern boundary of the

Pittsburgh group so as to exclude Pike, Bridgeport, and Alicia, thus replacing the line substantially where it was in 1905. As between the Diamond mine and Braznell, the alleged discrimination is not likewise conceded; the defendants pointing out that the latter mine has always been in the Pittsburgh group and falls within the radius of 30 miles from Pittsburgh, as discussed in *Clyde Coal Co.* v. *P. R. R. Co.*, 23 I. C. C., 135; *Pitt Gas Coal Co.* v. *P. R. R. Co.*, 37 I. C. C., 240; and *Brown* v. *Vandalia R. R. Co.*, *supra*. In the first of these cases the 30-mile limit is shown to exclude both Diamond and Braznell, but in the latter case both points are included within that limit. Both statements are based upon data introduced in evidence in the cases cited. Whichever is accurate it seems that both Diamond and Braznell are in the same zone; moreover, the haul from Braznell through West Brownsville Junction is approximately 2 miles longer than from Diamond through the same junction. These facts do not justify higher rates from Diamond than are contemporaneously maintained from Braznell on traffic to short-haul territory.

The proposal of the defendants to change the southern boundary of the Pittsburgh group, as it is now adjusted in relation to the destination territory here involved, so as to exclude Pike, Bridgeport, and Alicia, would result in rate increases from those points. None of them are represented in this proceeding. Furthermore, it appears that Braznell would still remain in the Pittsburgh group and have rates differentially lower than Diamond. It may be, as suggested by the defendants, that on this short-haul traffic the Pittsburgh group is too large; but any readjustment of that group should be undertaken under circumstances that will permit a more thorough consideration of the mines that would be affected and in a manner that will give an opportunity to the operators to be heard.

The evidence of record discloses an inequality in the rate adjustment which is unduly preferential of Alicia, Bridgeport, Pike, and Braznell, and unduly prejudicial of Diamond, within the meaning of section 3 of the regulating statute. This discrimination should be removed; but if that is undertaken by increasing the rates from mines not represented in this proceeding the usual fifteenth section application should be filed in accordance with the general order of the Commission entered November 8, 1917. The rates from Diamond to short-haul territory should not be higher than those contemporaneously maintained from the other mines herein mentioned.

These findings have no reference to the Pittsburgh group as at present adjusted on coal forwarded to the lake ports for transshipment by boat or to points beyond the western boundary of the short-haul territory. On that traffic the Pittsburgh rates are now maintained from Diamond.

MEYER, *Commissioner:*

The foregoing report of the examiner, which has been duly served upon the parties in accordance with the Rules of Practice, and in respect of which no exceptions have been filed, is adopted as the report of the Commission. An order will therefore be entered requiring the establishment and maintenance of rates on coal, in carloads, from Diamond to "short-haul territory" which shall not exceed the rates contemporaneously maintained to the same territory on like traffic from Alicia, Pike, Bridgeport, and Braznell. In giving effect to this order the carriers will not, without first filing an appropriate fifteenth section application and securing approval thereof, increase the rates from the four mines last mentioned. This statement is made here for the purpose of correcting an erroneous impression on the part of the defendants which existed at the time of the hearing as to the procedure necessary in event any discrimination found should be attempted to be removed other than by reducing the present rate from Diamond.

INVESTIGATION AND SUSPENSION DOCKET NO. 1153.

COMMODITIES FROM EAST ST. LOUIS, ILL.

FIFTEENTH SECTION APPLICATION NO. 1182.

RATES FROM ST. LOUIS DISTRICT TO SOUTHEASTERN POINTS.

Submitted March 13, 1918. Decided May 9, 1918.

1. Proposal of respondents to cancel through commodity rates on grain and grain products in carloads from East St. Louis, Ill., via the Baltimore & Ohio Southwestern Railroad to Louisville, Ky., or Cincinnati, Ohio, and connections, thence to Tampa and other Florida destinations, found to have been justified.
2. Authority to cancel through rates via the Baltimore & Ohio Southwestern Railroad from points in the St. Louis district to points in southeastern territory granted.

O. S. Lewis for respondents.
W. O. Bartholomew for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The following is in substance the report proposed by the examiner:

Tariff I. C. C. No. 255, of M. P. Washburn, agent, issued August 14, 1917, effective October 11, 1917, purports to cancel his tariff I. C. C. No. 190 which contains joint and proportional rates on commodities from Ohio and Mississippi river crossings and other points to certain destinations in Florida, including Tampa.

Upon protests by the Southern Illinois Millers Association, of St. Louis, Mo.; Charles Teidman Milling Company, of O'Fallon, Ill.; Pfeffer Milling Company, of Lebanon, Ill.; and Trenton Milling Company, of Trenton, Ill., representing so-called west end mills on the Baltimore & Ohio Southwestern Railroad, we suspended until August 8, 1918, the cancellation of said tariff I. C. C. No. 190 in so far as such cancellation would affect the rates on grain and grain products via the Baltimore & Ohio Southwestern Railroad, hereinafter called the respondent, from East St. Louis to the Florida destinations. Rates hereinafter stated are in cents per 100 pounds.

The local rate on these commodities from Cincinnati, Ohio, Louisville, Ky., and Evansville, Ind., to Tampa, for example, is 26 cents.

The rate to Tampa from East St. Louis on grain coming from beyond and reshipped from that point is 2 cents higher than from the crossings named, or 28 cents. Mills on the respondent's line at O'Fallon, Lebanon, and other points in Illinois near East St. Louis, known as west end mills, avail themselves of this reshipping rate to draw in grain from East St. Louis to their mills where it is milled in transit and the product forwarded to Florida points, the total charge from East St. Louis to Tampa being 28 cents plus a transit charge of one-half cent. The reshipping rate from East St. Louis to Cincinnati or Louisville is 8.4 cents. The cancellation of the through rate to Tampa by the respondent would make effective by that route the combination on Louisville or Cincinnati of 34.4 cents, an increase of 6.4 cents.

The representative of the respondent asserted that the cancellation of the through rates on these commodities from East St. Louis to Florida destinations is only a part, and a rather insignificant part, of the plan of that company to cancel the through rates via its line on classes and commodities from points in the St. Louis district to southeastern and southern points. To that end the respondent filed, on October 13, 1917, its Fifteenth Section Application No. 1182 seeking the necessary authority. Evidence in support of this application was offered at the hearing in respect to the suspension case here under consideration. The application will be dealt with later in this report. The distance from East St. Louis via the short line to Gainesville, Fla., said to be a representative Florida point, is 984 miles, while the distances via the routes of this respondent through Louisville and Cincinnati are 1,178.2 and 1,191.5 miles, respectively. The haul of the respondent is 322 miles from East St. Louis to Louisville, and 336 to Cincinnati. For these hauls the division received by that railroad out of the through rate to Florida points is but 4 cents. The carload minimum is 24,000 pounds. The minimum revenue derived by this road for the movement of a carload of grain or grain products from East St. Louis to Florida points via Cincinnati or Louisville is $9.60. The lines operating south from the crossings named to Tampa insist on their full local or proportional rates as divisions on through traffic and the respondent asserts that it is powerless to enforce any higher divisions than it now receives. Under the circumstances, it considers its participation in the traffic unremunerative and seeks to cancel the rates via its line. It was shown that in the 11 months ended December 1, 1917, only one car was shipped from the protesting mills to the Florida points named in the tariff. Six cars moved in the same period from these mills consigned to Jacksonville, Fla., from which point, it was suggested, they could have been reconsigned to

Tampa at the balance of the through rate. That any cars were actually so reconsigned is not contended. The justification, therefore, for the proposed cancellation of the through rates via this line on these commodities rests on three grounds: (1) The route is indirect, (2) the division received of the through rate is insufficient, (3) the traffic affected is insignificant in quantity. Representatives of the protesting milling companies were present at the hearing, but offered no testimony. In their protests reference was made to our report in *Rates on Grain Milled in Transit*, 35 I. C. C., 27. In that case the respondent here sought to cancel the existing through rates on grain and grain products from East St. Louis through Louisville or Cincinnati to southeastern and Carolina territory and to substitute proportional rates from East St. Louis to Louisville and Cincinnati, which combined with proportional or shrinkage rates from these crossings produced increased rates from point of origin to final destination. We found that the proposed increased rates were not justified. The primary reasons then urged for the cancellation of the through rates affected was that the divisions were unsatisfactory. The division then received by this line for the haul from East St. Louis to Louisville or Cincinnati on grain and grain products destined to southeastern or Carolina territory was 4 cents. If milled in transit at a point on the line of the respondent an additional one-half cent was charged. The divisions now received on this traffic to Florida points are the same as on the traffic considered in that case. Were the route fairly direct, the through rates reasonable as such, and the traffic of consequence, we would require the carriers to continue the through rates although the divisions received by the initial line might be unsatisfactory. Under the circumstances here existing, however, the route is indirect, the traffic almost negligible, and no good purpose could be served by requiring the respondent to continue the through rates it is proposed to cancel, and the order of suspension will be vacated.

FIFTEENTH SECTION APPLICATION NO. 1182.

As before stated, this application asks authority to cancel the through rates via the Baltimore & Ohio Southwestern Railroad from points in the St. Louis district to southern and southeastern points in the states of Alabama, Georgia, Florida, Mississippi, and Tennessee. The rates are contained in M. P. Washburn, agent's, tariffs I. C. C. Nos. 188, 214, 215, 220, 230, 232, and 243. It is represented that in many instances the route afforded for this traffic by the petitioner through Louisville or Cincinnati is very indirect. The following are representative examples of the respective distances from

St. Louis to some of the destinations by the direct line and by the lines through Louisville or Cincinnati:

From St. Louis to—	Via short line.	Via Louisville.	Via Cincinnati.
Prattville, Ala	605.3	828	956
Florence, Ala	385.6	590	754
Nashville, Tenn	364.5	502	626
Decatur, Ala	424	632	760
Milstead, Ala	646.2	886.4	974
West Point, Miss	617.5	816	944

In many instances the present rates from St. Louis to points in the territory affected are lower than from Cincinnati on both classes and commodities and in a few instances the rates from St. Louis are lower than from Louisville. The rate on petroleum products from St. Louis to Evergreen, Ala., is 48 cents, while it is 52½ cents from Louisville and Cincinnati. The application of rates from St. Louis via Louisville or via Cincinnati to these southern destinations lower than the rates contemporaneously applied from the intermediate points Cincinnati or Louisville is in violation of the long-and-short haul rule of the fourth section of the act. It is further urged that the lines operating into the southeast from Cincinnati and Louisville insist upon their local or proportional rates from these crossings as divisions of the through rates from the St. Louis district. The result is that the divisions received by this petitioner on through traffic from St. Louis to points in the southeast are in many cases so small as to leave to this petitioner no adequate revenue for the service performed. The request therefore rests upon three principal grounds: (1) The routes are circuitous; (2) the petitioner desires to bring its rates into alignment with the long-and-short-haul clause of the fourth section; (3) the revenues received for the traffic are inadequate. No objection has been urged to the application by any shippers and in our opinion the authority sought should be granted.

An appropriate order will be entered.

HALL, *Commissioner:*

The foregoing report was served upon counsel and no exceptions thereto were filed. Upon consideration of the record we adopt it and make it part of this report. Our orders of suspension will be vacated and an appropriate fifteenth section order entered.

INVESTIGATION AND SUSPENSION DOCKET NO. 765.

CLASS RATES FROM CHESTNUT RIDGE RAILWAY STATIONS.

Decided May 15, 1918.

Former findings reconsidered and *held*, that: (1) In the determination of what should be a reasonable allowance out of a line-haul rate to the Chestnut Ridge Railway for what is substantially a switching service it is not practicable to differentiate between class traffic, on the one hand, and commodity traffic, on the other; and (2) An average cost per carload ascertained upon all cars handled by the Chestnut Ridge Railway, including per diem, is equally applicable to class as well as commodity traffic, and in this case is applied to class traffic.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The prior report in this matter, 41 I. C. C., 62, was made June 27, 1916. That report may be referred to for a more complete statement of facts. This matter has again been considered by us in pursuance of the suggestion in the opinion of the United States district court for New Jersey, dated December 24, 1917, in the case of *Chestnut Ridge Ry. Co.* v. *United States*, 248 Fed., 791. The Chestnut Ridge Railway is one of the many industrial railroads which have several times received our consideration. *Industrial Railway Case*, 29 I. C. C., 212; 32 I. C. C., 129; the *Second Industrial Railways Case*, 34 I. C. C., 596; *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408; *Chestnut Ridge Railway Case*, 37 I. C. C., 558. In 37 I C. C., 558, the Chestnut Ridge received particular consideration.

It has been pointed out in the cases referred to that the Chestnut Ridge Railway is an industrial railroad. All of its stock is owned by the New Jersey Zinc Company, from which company the Chestnut Ridge Railway receives between 92 and 93 per cent of its entire traffic. Payments to the Chestnut Ridge are practically the same as payments to the New Jersey Zinc Company. In order, therefore, to prevent rebates to the Zinc Company by trunk lines connecting with the Chestnut Ridge, it is necessary to prevent such trunk lines from paying excessive divisions to the Chestnut Ridge. The *Tap Line Cases*, 234 U. S., 1; *United States* v. *Butler County R. R. Co.*, 234 U. S., 29; *O'Keefe* v. *United States*, 240 U. S., 294; *Manufacturers Ry. Co.* v. *United States*, decided by the Supreme Court April 15, 1918; *Second Industrial Railways Case*, 32 I. C. C., 129; 37

I. C. C., 558. A division which would produce an amount sufficient to cover the cost of service by the Chestnut Ridge and a fair return on the value of its property would be reasonable, and if the division exceeds this amount, it would to that extent be excessive and amount to a rebate to the principal shipper.

The occasion for the particular proceeding before us was that the Central Railroad of New Jersey, hereinafter called the Central, protested and we suspended certain class tariffs filed by the Delaware, Lackawanna & Western Railroad, hereinafter called the Lackawanna, and the Lehigh & New England Railroad, hereinafter called the New England. The tariffs so filed extended class rates then in existence on the Lackawanna and the New England to points on the Chestnut Ridge. At the same time certain divisions were agreed to be paid to the Chestnut Ridge. The Central protested the tariffs, not because it regarded the rates themselves unreasonable, but because it considered the divisions proposed excessive and would amount to a rebate to the New Jersey Zinc Company.

We thereupon ordered a hearing upon the propriety of the suspended tariffs. The testimony offered at this hearing related almost entirely to the proposed divisions to the Chestnut Ridge. That company was asked to, and did, produce evidence as to the cost of service upon its line. Divisions proposed on less-than-carload traffic were not found to be unreasonable and need not be considered. Passenger traffic is also not under consideration. The Chestnut Ridge produced figures showing an average cost of handling carload traffic both on its main line and on its branch line. Carload traffic interchanged with trunk lines, that is, the New England and the Central, was then separated from local carload traffic, which consisted principally of traffic between two plants of the New Jersey Zinc Company, and after an allowance of such differences as existed, including difference in length of haul, the average cost per carload on interchange traffic was ascertained.[1] This average included maintenance of way, transportation expenses, general expenses, overhead taxes, and, in fact, all operating expenses. The figures submitted by the Chestnut Ridge as to such items were accepted. The Chestnut Ridge owned no freight cars. It paid a certain amount per day after the first day's detention as car rental. This is known as per diem. An average per diem on all cars was made from the figures submitted by the Chestnut Ridge and was added to the average operating expenses above referred to. To this average was added a profit of 6 per cent upon

[1] For all practical purposes this general statement may be accepted as correct, but attention is called to the fact that our former report, 41 I. C. C., 62, 66, states that, so far as the Chestnut Ridge main line was concerned, it was impossible to segregate as between interchange and all traffic. During the year under consideration, as shown at page 65 of our report, but 338 cars moved exclusively over this main line, while 22,742 cars moved exclusively over the branch line.

the value of the property used for carrier purposes. This amount computed, as pointed out in our prior report, *supra*, totaling $3.25 per car on the branch line and $4.50 per car on the main line, was then stated to be a maximum which should be paid by the trunk lines to the Chestnut Ridge as its division. We regarded these amounts as reasonable maximum divisions for the service performed by the Chestnut Ridge. At the same time, they are sufficient to cover all expenses of the services rendered and a fair return upon the property used in the carrier service.

The average thus ascertained on all interchange carload traffic was then applied to the class traffic which was covered by the suspended tariffs. The tariffs which occasioned the Commission's investigation were tariffs governing class traffic. The court emphasized this in its opinion and stated that the per diem on class traffic was likely to be greater than the per diem on commodity traffic and suggested that an average per diem upon all carload traffic might not be fair in attaining an average to be used as a basis for a charge on class traffic alone. The court suggested therefore that we ascertain the average per diem upon class traffic.

In pursuance of the court's suggestion, on February 16, 1918, we issued an order of investigation for the purpose of ascertaining the average per diem paid by the Chestnut Ridge for all interchange carload class traffic to and from the points mentioned in the tariffs heretofore referred to. This order was served upon the parties, and on the same date a request was made upon the Chestnut Ridge for the requisite data. On February 27, the Chestnut Ridge advised that such figures would be available on or about March 15. On March 21 the Chestnut Ridge advised that it was still preparing the information. On April 2 the Chestnut Ridge informed us that no carload traffic moved under class rates to and from the territory covered by the above tariffs during the test period, that is, the year ending June 30, 1915. Thereupon we sent our accountants to examine the records of the Chestnut Ridge and they also found that no such class traffic moved. It thus appears that the information requested by the court is not in existence.

The situation was as follows: Prior to the time that these tariffs were filed, most of the traffic moved by the Central. The west plant of the New Jersey Zinc Company is on the Central. On traffic from this plant moving over the Central, therefore, the Chestnut Ridge could not get a division. In order that the Chestnut Ridge might get a portion of the haul, and therefore a division of the joint through rate, the traffic would have to move by way of the Chestnut Ridge to the New England, thence over the Lackawanna. The Lackawanna and the New England had on file with the Commission

class tariffs of upward of 400 pages, naming points on the line of the Lackawanna and points west of Buffalo. The commodity tariffs of the Lackawanna and the New England did not name the points but referred to the points named in the class tariffs. The commodity tariffs, therefore, were dependent upon the class tariffs. It was then proposed to extend the Lackawanna and New England tariffs to the Chestnut Ridge. It was necessary, therefore, in order to avoid reprinting tariffs naming all the points, to file a supplement extending the Lackawanna class tariffs to the Chestnut Ridge. A supplement to the commodity tariffs might then be filed referring to the class tariffs for the designation of points. The Lackawanna class tariffs were extended to the Chestnut Ridge by a supplement. Later a supplement to the commodity tariffs was filed, to become effective on the same date as the extended class tariffs. As soon, however, as the supplement was filed extending the class tariffs to the Chestnut Ridge, the Central protested, because, as stated above, it took the view that the divisions proposed would be excessive.

The service performed by the Chestnut Ridge on carload traffic is in reality a switching service. The operating cost of that service on this road is practically the same, regardless of the contents of the car, its origin, or destination. It is impracticable and of doubtful accuracy to attempt any refinement of the cost beyond the carload unit. A proper distinction could not be made between the class traffic on the one hand and commodity traffic on the other. There are many kinds of commodities as well as many classes. Just because certain traffic moves on a commodity rate does not mean that it is necessarily a lower grade traffic than traffic moving on class rates. Some commodity rates may be and are much higher than some class rates. To attempt such a refinement would necessitate a consideration of the contents of the cars. Distinction would probably have to be made between different commodities and different classes. This is impracticable.

As hereinbefore stated, we have before us evidence showing the average operating expense of all interchange carload traffic, including per diem on all traffic. This includes both class and commodity traffic. The application of an average per diem based upon all cars handled by the Chestnut Ridge to interchange carload traffic can not be prejudicial to the Chestnut Ridge. As will appear in our report of June 27, 1916, this average per diem was reached by dividing the total amount paid to other carriers by the total number of cars handled on the Chestnut Ridge. This divisor included cars containing less-than-carload traffic as well as cars used for interplant movements. The per diem on such cars is likely to be higher than on cars which are engaged exclusively in carload interchange traffic.

If there be any error in applying an average per diem ascertained on all cars handled to an average expense on interchange carload traffic, such error would be in favor of the Chestnut Ridge. This same divisor was used by the Chestnut Ridge in ascertaining the average amount per car for taxes, traffic expenses, and general expenses.

In view of the impossibility of securing the evidence which the court indicated should be adduced, and also in view of our opinion hereinbefore expressed that the refinement suggested is not as a working matter practicable, we must adhere to our former finding that:

The divisions proposed would be excessive for carload traffic handled exclusively over the Palmerton branch and can not be sanctioned. No division should be paid on such traffic, regardless of its origin or destination, in excess of $3.25 per car. On carload traffic to and from points east of Palmerton East the divisions proposed would be excessive to the extent that they would earn for the Chestnut Ridge more than $4.50 per car.

It should be remembered that our findings in the previous report were confined to class traffic for the reason that the sole issue before us was that of the propriety of the suspended class tariffs. For obvious reasons the statistics which were used as a basis for the determination regarding the propriety of the divisions of class rates would be equally applicable to commodity rates. This is a matter concerning which the Commission may initiate an investigation. The Chestnut Ridge had a full hearing as to the cost of service and divisions upon all interchange traffic; in fact, the evidence it produced was upon that basis and would be so applied if that issue were before us. As said before, this is in reality a switching service. The carload should be the unit, and no different charge should be made on different kinds of traffic.

No. 7818.[1]

PORT HURON & DULUTH STEAMSHIP COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted April 11, 1917. Decided May 6, 1918.

Divisions prescribed of joint rates between New York, N. Y., and Duluth, Minn., and points west thereof applicable via routes composed of eastern trunk lines, Grand Trunk Railway Company of Canada, Northwestern Steamship Company, and rail lines west of Duluth.

W. L. Jens for Northwestern Steamship Company; *Ernest L. Ballard* for eastern trunk lines; *Frederic L. Ballard* for Pennsylvania Railroad Company; and *W. K. Williams* and *H. C. Martin* for Grand Trunk Railway Company of Canada.

Chas. Donnelly, *Richard L. Kennedy*, and *B. W. Scandrett* for Northern Pacific Railway Company; Great Northern Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

HALL, *Commissioner:*

These three proceedings are closely allied and will be disposed of in one report. Each relates to the divisions of the joint rates on traffic between Minneapolis and St. Paul or Duluth, Minn., on the one hand, and points in eastern trunk line territory, on the other, via through routes in which the Northwestern Steamship Company and the Grand Trunk Railway Company of Canada, hereinafter called the Grand Trunk, were participating carriers.

In our original report in *Lake and Rail Rate Cancellations*, 38 I. C. C., 201, we declined to sanction the cancellation of the eastbound joint lake-and-rail class and commodity rates from Duluth and other ports at the head of Lake Superior, and the joint rail-lake-and-rail commodity rates from points west of Duluth, the lake service being by complainant's boat line, to eastern trunk line territory reached by or via the Delaware, Lackawanna & Western, hereinafter termed the Lackawanna, the Erie, Lehigh Valley, New York Cen-

[1] This report also embraces I. & S. No. 709, Lake and Rail Rate Cancellations; and No. 6512, Minneapolis Civic & Commerce Association et al. *v.* Algoma Central & Hudson Bay Railway Company et al.

tral, and the West Shore railroads, hereinafter collectively termed the eastern lines. In *Minneapolis Civic & Commerce Asso.* v. *A. C. & H. B. Ry. Co.*, known as *The Twin Cities Cases*, 33 I. C. C., 577, we refused to authorize an increase in the westbound rail-lake-and-rail class rates from eastern points to Minneapolis and St. Paul, referred to as the twin cities, or to permit a change in the relationship between the rates to the twin cities and the rates to Duluth. Upon petitions filed by the Port Huron & Duluth Steamship Company, now known as the Northwestern Steamship Company, and under either corporate name hereinafter referred to as the boat line, alleging that the divisions demanded by the eastern lines and by the lines operating west of Duluth were inequitable and unfair, and if allowed would compel it to retire from participation in the traffic, both proceedings were reopened to enable us to prescribe just and reasonable divisions of the rates.

By our original report in *Port Huron & Duluth S. S. Co.* v. *Pa. R. R. Co.*, 35 I. C. C., 475, and the order entered thereon, through routes and joint rates between points in trunk line territory and Duluth and points west thereof were required to be established via the Pennsylvania, the Grand Trunk, the boat line, and lines west of Duluth, namely, the Great Northern, Northern Pacific, Minneapolis, St. Paul & Sault Ste. Marie, and Chicago, St. Paul, Minneapolis & Omaha railways, hereinafter collectively called the western lines. Upon supplemental petition filed by the boat line we prescribed the divisions of the joint rates. *Port Huron & Duluth S. S. Co.* v. *P. R. R. Co.*, 40 I. C. C., 335. Subsequently the Grand Trunk, considering the divisions therein allotted to it to be unremunerative and unreasonable, filed a petition for rehearing and the proceeding was thereupon reopened for further consideration. Rates in this report are stated in cents per 100 pounds.

At the time of the rehearing the boat line operated three boats between Duluth and Port Huron, Mich., and Point Edward, Ontario, opposite Port Huron. Connection was made with the western lines at Duluth and neighboring ports and with the Grand Trunk at Point Edward. The service performed by the Grand Trunk consisted in the movement between Point Edward and the Niagara frontier. Its interchange with the Erie, Lehigh Valley, and New York Central was effected at Suspension Bridge, Ontario; with the Lackawanna at Black Rock, N. Y.; and with the Pennsylvania at Fort Erie, Ontario, or Black Rock. Until July, 1915, traffic was interchanged with the boat line at Port Huron, but owing to the destruction of the warehouse at Port Huron interchange was subsequently made at Point Edward.

Since the submission of this proceeding we have announced our decision in *Lake and Rail Rate Cancellations*, 44 I. C. C., 745, per-

mitting the Grank Trunk to cancel the joint lake-and-rail class and commodity rates on traffic from Duluth to points in trunk line territory tendered to it by the boat line at Point Edward. It was contended, and the contention was sustained, that inasmuch as the service performed by the Grand Trunk consisted in the movement of the traffic solely between points in the Dominion of Canada we could not under the act require it either to establish in the first instance, or to maintain when already established, joint arrangements with domestic carriers for the through carriage of traffic from and to points in this country. But it was pointed out that although our authority was thus limited, a Canadian line while engaged in such through transportation subjects itself to our jurisdiction over the joint rates in which it participates and must abide by our conclusions as to the reasonableness of such rates and the divisions thereof. It is clear, therefore, that although we may not require the maintenance of the joint rates in the future we may determine and prescribe the divisions of the rates heretofore in effect.

Following the withdrawal of the Grand Trunk from participation in the through routes the boat line discontinued operation via Point Edward, and, effective September 10, 1917, the western lines published the following item:

> No rates via Northwestern Steamship Company account having discontinued operation from Duluth, Superior, and Itasca.

thus canceling the joint rates applying between trunk line territory and points west of Duluth. The routes, therefore, are no longer in operation and the divisions herein prescribed are for the purpose only of apportioning the revenue between the interested carriers on traffic which moved prior to the cancellation of the rates.

Since 1888 through routes and joint rates had been in effect eastbound from Duluth and ports grouped therewith and points in the northwest to points in eastern trunk line territory via the boat line and the Grand Trunk. They were originally established in connection with the Lackawanna, Erie, and Lehigh Valley railroads. The West Shore became a participant in 1890, and the New York Central and the Boston & Albany railroads in 1914. The Pennsylvania was not a party to the through routes and joint rates until required to join therein in 1915.

The first joint rates westbound were made in connection with the Lackawanna. In 1897 they were established in connection with the West Shore. The latter remained in effect until July 1, 1912, when they were canceled by the West Shore in order to restrict the movement of traffic to its lake line, but in May, 1914, at the solicitation of the boat line they were restored and also made effective from

points on the New York Central and Boston & Albany. The Lehigh Valley first published the rates in 1914 and the Erie in 1915.

Through eastbound traffic moving by way of the boat line consisted principally of grain products taking rates of 23 cents and 18 cents from Minneapolis and Duluth, respectively, to New York. The 23-cent rate was used by all the carriers in stating their contentions as to the eastbound divisions. Westbound traffic moved principally on the lower class rates and on commodity rates lower than the sixth-class rates.

Although the methods formerly employed in arriving at the divisions of the eastbound and westbound rates effective between the twin cities and New York were not precisely similar, they were alike in most particulars. Taking as an illustration the eastbound grain products rate, the method was as follows: The western lines were allowed 25 per cent of the joint rate and from the remainder there was deducted a terminal charge of 3 cents, which was added to the eastern lines' proportion. Of the balance, the boat line was allowed 33.6 per cent, its mileage prorate of the Duluth-New York distance, if the traffic moved via the Lehigh Valley, with slightly different proportions if it moved over certain of the other eastern lines. From the balance 1.3 cents was deducted to cover the Grand Trunk's share of the cost of transfer between boat and car at Port Huron or Point Edward and added to its proportion; the remainder was then prorated between the Grand Trunk and its eastern connections on the basis of 229 miles for the haul from Point Edward to Suspension Bridge or Black Rock and 450 miles for the haul east thereof. In determining the boat line's proportion, 2 miles of water haul was considered the equivalent of 1 mile of rail haul. The distance via the Grand Trunk from Point Edward to Suspension Bridge is a little less than 200 miles, but 229 miles, the distance from Detroit to Buffalo, has long been used by that carrier and others operating between the Detroit and St. Clair rivers and the Niagara frontier in dividing rates with eastern carriers. The average distance via the eastern lines from Buffalo to New York, excluding the longer route of the Pennsylvania, is 428 miles, and from Suspension Bridge and Black Rock to New York 442 miles. The distance east of Buffalo customarily used in determining percentages is 450 miles.

In dividing the westbound class rates, the western lines, instead of receiving 25 per cent of the rate, received the following arbitraries:

Class	1	2	3	4	5	6
Arbitrary (in cents)	15.56	12.88	10.24	7.12	6.24	5.12

Marine insurance was then deducted and subsequently added to the boat line's proportion, but in other respects the divisional basis was

the same. The divisions in cents per 100 pounds obtained on the above bases were as follows:

	New York to twin cities, classes.						Twin cities to New York, grain products.
	1	2	3	4	5	6	
Eastern lines	29.63	25.97	19.64	13.97	11.72	9.79	8.4
Grand Trunk	14.83	12.97	9.76	6.88	5.73	4.75	4
N. W. S. S. Co.	22.98	20.18	14.36	10.03	8.31	6.34	4.8
Western lines	15.56	12.88	10.24	7.12	6.24	5.12	5.8
Total	83	72	54	38	32	26	23

The class rates to Duluth were divided in like manner among the lines participating, but resulted in slightly lower proportions, except on sixth-class rates, due to the fact that on the first five classes the arbitraries west of Duluth were less than the differences between the Duluth and twin cities rates. The divisions of the Duluth rates are shown below in cents per 100 pounds:

	New York to Duluth, classes.						Duluth to New York, grain products.
	1	2	3	4	5	6	
Eastern lines	27.23	23.71	18.43	13.58	11.38	9.84	8.8
Grand Trunk	13.62	11.83	9.14	6.68	5.56	4.78	4.2
N. W. S. S. Co.	21.15	18.46	13.43	9.74	8.06	6.38	5
Total	62	54	41	30	25	21	18

At the opening of navigation in the spring of 1914 the eastern lines, upon representations made by the boat line of an imperative need of additional revenue to permit it to continue in operation, agreed to reduce their divisions of the rates on grain products 1 cent per 100 pounds, except to points within approximately 150 miles of Buffalo, and the boat line's proportion was increased by that amount. The Grand Trunk was not asked to participate in this additional allowance to the boat line for the reason, as may be inferred from the explanation given by the eastern lines, that its proportion was too low, considering the handling expense to which it was subjected, to permit of reduction. The eastern lines also agreed in 1914 to accept lower divisions of the westbound class rates. Before the rates were canceled in 1912 the West Shore and the Lackawanna had received 35.7 cents, first class, which was the same as their east of Buffalo proportion of the New York-Chicago all-rail rate. But when the joint rates were restored in 1914 they reduced their divisions to the figures shown above.

On or about July 28, 1915, the eastern lines served notice that, effective September 15, 1915, they would require the same revenue

east of Suspension Bridge or Black Rock as accrued to them east of Buffalo in the division of the all-rail New York-Chicago rates. This would have accorded them a division of 9.6 cents on grain products and 37.3 cents on traffic taking the first-class rate of 83 cents to the twin cities. Subsequently they modified their demands and consented to accept their east of Buffalo proportions of the New York-Chicago all-rail rates in effect prior to the 5 per cent increase, or:

1	2	3	4	5	6	Grain products.
35.6	31.2	24.8	17.5	15.2	13	9.2

The Pennsylvania insists upon its full divisions of the all-rail rates.

The western lines also have proposed changes in their divisions. For a number of years they had received 15.56 cents as their division of the first-class rate of 83 cents from New York to the twin cities. When that division was agreed upon, the spread between the rates to Duluth and the twin cities was on a differential scale of 15 cents, first class. In *Commercial Club of Duluth* v. *B. & O. R. R. Co.*, 27 I. C. C., 639, we required a reduction in the rates to Duluth which increased the differentials to a 21-cent scale. The divisions asked by the western lines are the class differentials. On eastbound grain products they have offered to accept slightly lower divisions than they have heretofore received, i. e., 23½ per cent of the through rate instead of 25 per cent, or 5.4 cents.

The eastern lines justify their demands mainly on the following grounds: That these routes and rates were established at the request of the boat line and brought no traffic to the eastern lines in which they would not otherwise participate, while affording new traffic to the boat line and the Grand Trunk; that they involved a longer rail haul, a shorter water haul, and one more participating carrier than the standard lake routes; that the Great Lakes Transit Corporation has accorded them the divisions here asked; and that since the service performed by them was identical whether the traffic moved via lake-and-rail routes or all-rail routes they are entitled to their all-rail earnings. The Grand Trunk takes the position, on the other hand, that the demands of the eastern lines are unreasonable and are made without consideration of the rights of the other carriers participating in the rates. It contends that the division of the former eastbound grain products rate asked by them is clearly excessive, as shown not only by their acquiescence in the former arrangement for a period of nearly 25 years, but also in their voluntary reduction of 1 cent per 100 pounds in 1914. It also alleges that the transfer of grain products from the boats of the Great Lakes Transit Corporation to cars at Buffalo is attended with an expense not incurred when de-

livery is made to the eastern carriers by rail, and that the latter therefore do not in fact receive as much on other ex lake traffic as they are here demanding. The western lines urge the reasonableness of their proposed divisions of the westbound class rates by comparison with the local rate of 41.4 cents, first class, from Duluth to the twin cities, approved by the Commission in *Freight Rates from Minnesota Points*, 32 I. C. C., 361, and upon the theory that to grant them a division less than the 21-cent differential scale would afford to the carriers east of Duluth a division of a rate to Duluth higher than the present joint rate. They are not willing, however, to accept the difference of 5 cents between the rates on grain products from Duluth and the twin cities to New York.

The boat line suggests that on westbound traffic the western lines should receive their former arbitraries, and that the balance should then be prorated east of Duluth on a mileage basis after first deducting marine insurance, the cost of transfer at Point Edward, and the eastern line's terminal charge. It also suggests that the eastbound grain products rate should be divided by allowing the western lines 5 cents, the eastern lines their earnings on traffic via other lake routes less 1.5 cents, the cost of transfer across the dock at Buffalo, and that the remainder be divided between the boat line and the Grand Trunk on a mileage basis.

Much was said of record concerning the cost to the eastern lines of interchanging traffic which moved via the boat line and the Grand Trunk compared with the cost in connection with other ex lake traffic. The former was interchanged by rail at the Niagara frontier with no expense there for handling, whereas the latter requires a transfer over the dock at Buffalo, at an expense of 1.5 cents. The net revenue accruing to the eastern lines under their proportion of 9.2 cents on grain products, for example, received from the Great Lakes Transit Corporation, therefore does not exceed 7.7 cents, and is further reduced 0.5 of a cent in some instances by the necessity of employing the Buffalo Creek Railroad to perform an intermediate switching service. On less-than-carload traffic moving in lots of 10,000 pounds or more, which constitutes the bulk of the westbound movement, the entire expense of the transfer over the dock is borne by the lake carrier. The eastern lines endeavor to show that the cost of the service in connection with the boat line and the Grand Trunk was in fact greater on less-than-carload traffic than it is in connection with the Great Lakes Transit Corporation route, but the evidence in this respect is inconclusive.

It is unnecessary to enter upon an extended discussion of the various contentions urged by the different parties to the joint rates in

support of their respective interests. The arrangements for the through carriage of traffic in connection with the boat line and the Grand Trunk were established by some of the eastern lines many years ago and were extended to include others partly by orders of this Commission, but principally by the voluntary acts of the carriers. Except for the temporary withdrawal of the westbound rates the only change that occurred prior to the concerted action of the eastern lines in July, 1915, was their voluntary acceptance of lower divisions than they had theretofore received. These demands for higher divisions were made after they had been required to sever relations with their affiliated boat lines, by virtue of which they had been in a position largely to control their divisions on both lake-and-rail and all-rail traffic.

In prescribing the divisions of joint rates we may not consider the interests of one or more carriers only, but must consider the rights of all. Each participating carrier is entitled to a fair and equitable division of the rates. The method by which they are obtained is of secondary importance. Where a method that has been mutually agreed upon by the interested parties does not result in inequalities that should be corrected, but on the contrary will afford a fair and reasonable apportionment of the rate, we need not prescribe a different basis.

We are not convinced upon this record that the eastern lines have demonstrated the propriety of the divisions they seek to have established. There is no conclusive showing that their earnings under the class rates have been less than reasonable for the service they performed and should be materially increased at the expense of the other lines. Some increase, however, has been shown to be warranted in their division of the eastbound rates on grain products.

On the other hand, we are satisfied that the western lines should receive the divisions they are asking on class traffic to the twin cities. Formerly the rates from Duluth to the twin cities were on a 35-cent scale. They were subsequently increased to a scale of 41.4 cents, and the increased rates were approved in *Freight Rates from Minnesota Points*, *supra*. Moreover, according lower divisions to the western lines than they are asking in effect divides between the lines east of Duluth a proportion of a rate higher than the 62-cent scale found to be reasonable for the service from New York to Duluth. In our supplemental report in *Port Huron & Duluth S. S. Co.* v. *P. R. R. Co.*, *supra*, we prescribed 5 cents as their division of the 23-cent grain products rate from the twin cities to New York. This is the same as the proportional rate maintained by them to Duluth during the ter season and has not been shown to be insufficient.

Upon the whole record, we find the following to be reasonable divisions of the rates here under consideration, using for illustrative purposes the first-class rates from New York to Duluth and the twin cities and the rates on grain products in the opposite direction. In fixing these divisions, we have used the method employed by the carriers in determining the divisions of the class rates to Duluth, adding for the western lines the 21-cent differential on traffic to the twin cities and on grain products to New York the division of 5 cents heretofore found reasonable:

	Eastern lines.	Grand Trunk.	N. W. S. S. Co.	Duluth.	Western lines.	Twin cities.
Divisions of first-class rates from New York to the twin cities and Duluth.....	27.23	13.62	21.15	62	21	83
Divisions of rates on grain products from the twin cities and Duluth to New York..	8.74	4.22	5.04	18	5	23

In our supplemental report in No. 7818, we granted the Pennsylvania a division of 9.2 cents on grain products from Duluth or the twin cities to New York. Upon further consideration and in the light of the additional evidence now of record we are of opinion that our former conclusion should be modified. No just cause appears why that carrier should enjoy higher divisions than are here found reasonable for other carriers operating between New York and the Niagara frontier.

It was strongly urged by the Pennsylvania at the rehearing that it should not be required to participate in the Grand Trunk's expense of the transfer at Point Edward and that both the Grand Trunk and the boat line should participate in the eastern terminal expenses. The customary practice for years has been to deduct the so-called terminal charge before prorating and add it to the Pennsylvania Railroad's proportion, and this has been done not only at the ports but at inland points where no unusual terminal expenses are incurred. It is said to be a recognition of the value of the terminals, but no such deductions are participated in by the Pennsylvania on traffic to or from western points having terminals of equal value and of equal expense to maintain.

It is not necessary to pass upon the question presented. The real question at issue is the amount of the divisions and not the method by which they are obtained. We are of the opinion that the divisions herein prescribed should be made applicable on traffic which moved to or from stations on the Pennsylvania.

The carriers will be expected to work out the divisions of other rates formerly applicable to this route in accordance with the views herein expressed.

DANIELS, *Chairman*, dissenting:

I am unable to agree to the divisions fixed in the majority report. The route in question was not established in the interest of the eastern trunk lines, but primarily for the benefit of the Grand Trunk and the boat line. While I appreciate the impropriety of approaching the subject of divisions by considering the interests of only one group of carriers, we may not overlook the fact that the eastern carriers received no additional traffic by the establishment of this route. On the contrary, their participation therein operated to reduce their earnings on all-rail traffic. Under these circumstances I know of no sound reason for requiring the eastern lines to accept materially smaller divisions on traffic interchanged with the boat line than they have received from other lines under like circumstances.

In *Port Huron & Duluth S. S. Co.* v. *P. R. R. Co.*, 40 I. C. C., 335, we prescribed divisions of the joint rates here in issue. To the Pennsylvania lines east of Buffalo we accorded 9.2 cents per 100 pounds as their proportion of the joint rate of 23 cents on grain products from the twin cities to New York. In the majority report it is proposed to reduce this allowance to 8.74 cents. In my opinion the conclusion reached in the earlier report is more just to the eastern lines.

Taking the Pennsylvania as typical of the eastern railroads, we find that its proportion of the all-rail reshipping rate of 17.5 cents from Chicago to New York, that being the rate in effect at the time of the original hearing, was 9.6 cents. In our previous opinion we accorded to the eastern lines, as previously stated, a division of 9.2 cents, giving the Pennsylvania 0.4 cent less than on traffic moving all-rail; and this in spite of our finding in the previous report that "the service performed by the Pennsylvania from Black Rock to New York is the same whether the prior transportation has been by the complainant from Duluth to Port Huron and thence by the Grand Trunk, or by the Grand Trunk all-rail." The majority report now proposes to reduce this division to 8.74 cents. I am not convinced that there is adequate reason for the further reduction.

While divisions have often been arbitrarily determined and while there are no hard and fast rules for fixing them, one test which seems to have had some recognition in connection with the rates here in issue is based on a mileage prorate, assuming 2 miles of water haul to be the equivalent of 1 mile of rail haul. This basis would give the following result:

	Miles.	Per cent of total mileage.	Division.	Ton-mile earnings.
Western lines	150	12.4	2.9	3.79
Boat line	344	28.4	6.5	3.79
Grand Trunk	200	16.5	3.8	3.79
Pennsylvania	518	42.7	9.8	3.79

It will be seen that this plan would give the Pennsylvania a division of 9.8 cents, which is 0.6 cent more than was accorded in the previous report and more than 1 cent higher than the division now fixed in the majority report.

It is also proper to consider the fact that the Pennsylvania gains nothing in particular by its participation in the route in question, and that on a substantial part of the traffic it is actually short hauled. On the other hand, its expensive terminals and the important territory which it reached were made available to the Grand Trunk and to the boat line, giving them an advantage which is obviously of great advantage to them. That matters of this kind should be given due weight in fixing divisions is well settled. *Star Grain & Lumber Co.* v. *A., T. & S. F. Ry. Co.*, 14 I. C. C., 364, 370; *Chamber of Commerce of Milwaukee* v. *C., R. I. & P. Ry. Co.*, 15 I. C. C., 460, 467; *Board of Trade of Winston-Salem* v. *N. & W. Ry. Co.*, 26 I. C. C., 146, 149; *New Pittsburgh Coal Co.* v. *Hocking Valley Ry. Co.*, 26 I. C. C., 121, 123. Moreover the route in question, established and maintained primarily in the interest of the Grand Trunk and the boat line, was uneconomical, involving a longer rail haul and a shorter water haul than the standard lake routes, and one additional rail carrier.

The division of 9.2 cents accorded to the Pennsylvania in the previous report yields it earnings of 3.5 mills per ton per mile and 7.1 cents per car-mile for its actual haul of 518 miles from Fort Erie (Buffalo) to New York, based on a loading of 40,000 pounds. Under the division now proposed by the majority the earnings will be 3.4 mills per ton-mile and 6.6 cents per car-mile. These earnings can scarcely be regarded as compensatory, especially when it is considered that the Pennsylvania derived little benefit from its enforced participation in this route. For these reasons I am unable to agree with the conclusion of the majority.

I am authorized to say that COMMISSIONER AITCHISON concurs in the views here expressed.

WOOLLEY and ANDERSON, *Commissioners*, did not participate in the disposition of these cases.

No. 9923.

AMERICAN CAST IRON PIPE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 1952, 2060, AND 3239.

Submitted December 12, 1917. Decided May 9, 1918.

1. Rate on cast-iron pipe, in carloads, from North Birmingham, Ala., to Watervliet, Mich., found to have been and to be unreasonable. Reasonable maximum rate prescribed and reparation awarded.
2. Fourth section relief denied.

H. D. Hughes for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of cast-iron pipe at Birmingham, Ala. By complaint filed October 18, 1917, it alleges that the rate of $5.37 per net ton charged by defendants on 13 carloads of cast-iron pipe, shipped from North Birmingham, Ala., to Watervliet, Mich., between May 22 and August 9, 1916, was unreasonable, and in violation of the fourth section of the act to the extent that it exceeded $5.11. Reparation and the establishment of a reasonable rate are asked. Rates are stated in amounts per net ton.

The shipments aggregated 644,193 pounds, and moved over the lines of defendants through La Crosse, Ind. Charges were collected in the sum of $1,704.73. A rate of $5.37 was published to Holland, Mich., on the Pere Marquette Railroad, 48 miles beyond Watervliet, and legally applicable to the latter point by intermediate application, so that the shipments were overcharged $11.07.

A rate of $5.11 applied and applies on cast-iron pipe from North Birmingham to points on the Pere Marquette north from New Buffalo to and including Benton Harbor, Mich., which is 12 miles south of Watervliet; and to Grand Haven, Muskegon, Grandville, Grand Rapids, Sparta, Greenville, and Ionia, Mich. Some of the latter points are a considerable distance beyond Watervliet. This rate also

applies by way of the Michigan Central Railroad to Kalamazoo, South Haven, and Grand Junction, Mich., the latter point also being located on the Pere Marquette, 20 miles north of Watervliet.

The rate to Grand Rapids by way of the Pere Marquette applies through Watervliet. Those portions of defendants' fourth section applications by which they seek authority to continue to charge for the transportation of cast-iron pipe, in carloads, from Birmingham and North Birmingham to Grand Rapids rates which are lower than the rates contemporaneously maintained on like traffic to Watervliet and other intermediate points, were heard with this case. Defendants were not represented at the hearing. The fourth section applications will be denied to the extent that they are involved.

We find the rate legally applicable was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed $5.11 per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $94.83, with interest, which amount includes the above-mentioned overcharge.

Appropriate orders will be entered.

No. 8354.[1]

KANSAS CITY MILLERS' CLUB ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted January 12, 1918. Decided May 6, 1918.

1. Finding in *Western Rate Advance Case*, 35 I. C. C., 497, that carriers had justified a minimum weight of 40,000 pounds on grain products, affirmed on rehearing.
2. The maintenance of a higher interstate minimum on flour in carloads between points in the states of Kansas, Nebraska, Oklahoma, Texas, Arkansas, Missouri, and Iowa than the minima contemporaneously maintained and applied to the intrastate transportation of flour in carloads within those states found unduly prejudicial to complainants and to interstate commerce and unduly preferential of their competitors and of intrastate commerce.
3. Minimum of 40,000 pounds on flour in carloads from the Missouri River and points in the state of Kansas to destinations in Mississippi Valley territory found unduly prejudicial to complainants and unduly preferential of their competitors located at points in the state of Illinois, from which a minimum of 30,000 pounds applies to the same destinations.
4. The 40,000-pound carload minimum on flour from the Missouri River and points in the states of Kansas, Nebraska, Oklahoma, Iowa, and Missouri to destinations in southeastern and Carolina territories not found to be unduly prejudicial.

R. D. Sangster and *W. S. Sterling* for Kansas City Millers' Club; *W. H. Marshall* for Southwestern Missouri Millers' Club; *C. V. Topping* for Southwestern Millers' League; *Ed. P. Byars* for Fort Worth Freight Bureau; and *Harry L. Sharp* for Atchison Commercial Club.

T. J. Norton, *Robert Dunlap*, *C. S. Burg*, *Fred G. Wright*, *F. E. Andrews*, *Arthur E. Haid*, *J. C. La Coste*, *B. H. Stanage*, *J. W. Allen*, and *C. C. P. Rausch* for defendants.

Thomas L. Hall for Nebraska Railway Commission; *George A. Henshaw* and *A. Carey Hough* for Oklahoma Corporation Commission and Oklahoma Millers' Association; *Dwight N. Lewis*, *J. H. Henderson*, and *Walter Condran* for Iowa Railroad Commission and Iowa shippers of grain products; *A. E. Helm* for Public Utilities Commission for the State of Kansas; *C. B. Bee* for Public Service Commission of the State of Missouri; *D. L. Kelley* and *Oliver E.*

[1] This report also embraces Investigation and Suspension Docket No. 555 in so far as pertains to minimum weights on grain products.

Sweet for South Dakota Board of Railroad Commissioners; and *W. V. Hardie* for Oklahoma Traffic Association, interveners.

REPORT OF THE COMMISSION.

CLARK, *Commissioner:*

In the *1915 Western Rate Advance Case*, 35 I. C. C., 497, we found that the proposed interstate carload minimum of 40,000 pounds on grain products had been justified. In answer to the contention there made that different minima interstate and intrastate would result in unjust discrimination, we said:

> This is a question not here involved. Different states in the territory affected by the tariffs suspended maintain different minima and we can not therefore fit the interstate minimum to each. To do so would result in state regulation of interstate commerce.

By complaint filed October 1, 1915, the Kansas City Millers' Club, the Southwestern Millers' League, the Southwestern Missouri Millers' Club, and the Atchison Commercial Club, the members of which are engaged in the milling, manufacture, and selling of grain products in the states of Missouri, Kansas, Nebraska, Colorado, Arkansas, and Oklahoma, allege (1) that the carload minimum of 40,000 pounds applicable on interstate carload shipments of grain products is unduly prejudicial as compared with the varying lower intrastate minima applicable within certain of the middle western states; (2) that the minimum of 40,000 pounds applicable on carload shipments of grain products from the Missouri River and from points in the states of Missouri, Kansas, Nebraska, Colorado, Oklahoma, Iowa, Arkansas, Wisconsin, and Texas, and various other states to points in the states east of the Mississippi River and south of the Ohio River, is unduly prejudicial and relatively unreasonable in comparison with the minimum of 30,000 pounds applicable from Illinois and central freight association territory to the same destinations.

A hearing was had in December, 1915, and the case was argued on briefs and orally. None of the state commissions intervened or was represented at the hearing, but it was shown by defendants that applications had been or would be filed with the several state commissions for permission to increase the intrastate minimum to 40,000 pounds. Subsequent to that hearing our Rules of Practice were amended to provide that upon complaint alleging discrimination between interstate and intrastate traffic, we would invite the attention of the state authorities to the complaint in order that they might intervene and present evidence if they so desired. Inasmuch as it would have necessitated a readjustment of the then existing minima in several states in the event that undue prejudice were found to exist, we deemed it advisable to take the matter up with

the state commissions for the purpose of ascertaining the status of the carriers' applications which had been filed with them, and also to learn whether or not they desired to intervene and present evidence if the case were reopened. Several of the state commissions expressed a desire to be heard. On December 5, 1916, we accordingly reopened the case and set it for further hearing on January 4, 1917, and at the same time reopened for consideration in connection therewith so much of the *Western Rate Advance Case*, *supra*, hereinafter called the *Suspension Case*, as pertained to the minimum weight on grain products. Upon motion of the various state commissions, we continued that hearing with the understanding that the carriers would promptly file or refile applications for permission to increase the intrastate minima in the several states, that the state commissions would accord prompt hearings and decisions thereon, and that the records so made before the several state commissions would be filed as a part of the record in this case. Further hearing was held on October 29, 1917, and in conformity with the understanding had, the state commissions of Iowa, Nebraska, Kansas, and Oklahoma filed for consideration in this case the records made before them, together with their decisions thereon. No representatives of the other state commissions except the Public Service Commission of Missouri were present. Further argument was had, both upon brief and orally. The case is therefore now before us on the combined records.

It might be said at the outset that the records before the state commissions do not touch, except remotely, upon the question of discrimination here presented, the evidence being confined to the reasonableness of the minima applying locally within the respective states. Certain increases in the intrastate minima were authorized which will be referred to later. No further evidence was offered in the *Suspension Case* by any shipper or dealer. The rate expert for the Board of Railroad Commissioners of South Dakota appeared and submitted the record made before that commission on the application of the carriers for permission to increase the intrastate minimum to 40,000 pounds. He stated, however, that he does not generally object to the present interstate minimum of 40,000 pounds. He suggested that in the event we find that a minimum of 40,000 pounds is reasonable interstate and that the maintenance of a lower intrastate minimum results in undue prejudice we divide the central states comprising western trunk line and trans-Missouri rate territories into two districts at a line approximating the 97th meridian, and that a minimum no higher than 30,000 pounds be applied upon traffic to and from those parts of the states of North Dakota, South Dakota, Nebraska, and Oklahoma lying west of that line, and a

minimum of 40,000 pounds upon traffic between points in western trunk line territory and between South Dakota points and points in western trunk line territory east of that line. This suggestion was based principally on the difference in density of population east and west of the proposed line, and the alleged great disadvantage to the local merchant and consumer west thereof in handling flour in greater quantities than 30,000 pounds per car. It will suffice to say, however, that the basis suggested would not meet the issues of the complaint. It might also be observed that certain of the intrastate minima east of the aforementioned line are less than 30,000 pounds, that carriers have been denied authority to increase the same, and that the minimum in certain states west of that line is now 40,000 pounds.

The evidence before the state commissions deals principally with commercial conditions. The undisputed evidence before the Iowa commission is summarized in the report of that commission, and as it is representative of the evidence before the other state commissions, the records of which have been submitted for consideration herein, we reproduce it:

1. The standard box car now in use by carriers generally is a 40-foot car with a carrying capacity of the commodities in dispute in excess of 40,000 pounds. There are practically no cars in active service on any of the larger systems of railway operating in Iowa of a capacity of less than 30,000 pounds, and there are very few of less than 40,000 to 80,000 pounds capacity.

2. The local flour and feed mills of Iowa produce but a small proportion of flour and grain products consumed in Iowa, perhaps no more than 25 per cent. These mills supply a limited territory, the evidence indicating that the average haul would not exceed 88 miles.

3. The average local dealer in flour and other millstuffs in the towns and villages of Iowa is running his business upon a very small capital, making it financially impossible for him to purchase a 40,000-pound car of flour at the present abnormal high prices, also at the prices obtained prior to the present application for an increase in the minimum weight; that a great many of said local dealers can not use now a 24,000-pound minimum supply, except that a portion of the car be made up of feed and other mill products.

4. Even though the local dealer might be financially able to buy a car of flour upon the 40,000-pound minimum basis, his market is such that he could not dispose of the flour before it deteriorated. Furthermore, it would require additional capital to provide proper storage room.

5. The present minimum in Iowa on flour and other millstuffs is 24,000 pounds, while upon interstate traffic to and from Iowa towns the minimum is 40,000 pounds on flour and on other millstuffs, 40,000 pounds on cars 40 feet 6 inches and under in length, with a sliding scale for other size cars.

The complainant's evidence at the first hearing was directed principally to the difficulties which were encountered because of the different minima and to the contention that these would be surmounted if a uniform minimum were prescribed. Certain evidence

was introduced intended to show that the 40,000-pound minimum is unreasonable because it necessitates the purchase and handling of larger quantities than the local dealers have been accustomed to buy. Counsel for complainants stated at the first oral argument that they did not undertake to show that the 40,000-pound minimum is unreasonable and that he saw no reason why it should not be uniformly applied.

In many instances there are different minima for the various articles classified as grain products. The evidence deals principally with flour, and on brief on rehearing counsel for complainants requested that we require the application of a uniform carload minimum weight on flour shipments, state and interstate, in the territory defined. We will, therefore, consider primarily the issues as to that commodity. The following table shows the intrastate minima complained of effective when the complaint was filed and at the time of the first hearing:

Arkansas	[1] 24,000	Texas	28,000	Wisconsin	30,000
Iowa	24,000	Oklahoma	24,000	Nebraska	24,000
Louisiana	30,000	Illinois	30,000	Kansas	24,000
Minnesota	26,000	Missouri	30,000	Colorado	40,000

As a result of the hearings before the various state commissions the following changes in minima have been authorized: Arkansas, Oklahoma, and Texas, 30,000; Nebraska and Minnesota, 28,000; Illinois and Wisconsin, 40,000. No increase was permitted in Iowa or Kansas. In Nebraska and Minnesota certain further increases in the minimum weights on mixed carloads of flour and other grain products were permitted. The St. Louis-San Francisco applies a 40,000-pound minimum in connection with certain specified rates in the state of Oklahoma, which are lower than the intrastate distance scale.

The Missouri commission had not up to the time of hearing rendered a decision on the carriers' application. It appears that an application was filed some time prior thereto, but upon the hearing it was found that the application had not been submitted in proper form. The carriers accordingly withdrew it and filed a new application. At the hearing the representative of the Public Service Commission of Missouri stated that that commission would expedite hearing and decision on the application and that the record would then be promptly forwarded to us. We have no advice as to the present status.

In purchasing carloads of flour a majority of the smaller dealers desire the lowest possible minimum. They complain of the 40,000-

[1] On the St. Louis-San Francisco the minimum was and is 40,000.

pound minimum because it requires larger purchases than can be satisfactorily handled with their limited facilities, it requires the investment of more money, and there is danger of the flour being damaged where storage facilities are inadequate. Therefore it can readily be seen that shippers using the 40,000-pound minimum are at a disadvantage as compared with their competitors who ship on minima from 10,000 pounds to 16,000 pounds less. Numerous instances of such disadvantage are shown by millers and by dealers in grain products. A few typical examples will be referred to.

The Concordia Milling Company is located at Concordia, Kans. Its distributing territory is principally in Kansas, Missouri, Iowa, and Colorado. A substantial part of its product is sold in 40 or 50 localities in northwestern Missouri. Its traffic manager testified that because of the increase in the interstate minimum from 30,000 pounds to 40,000 pounds and in order to continue to sell in this territory it was found necessary to establish a warehouse at St. Joseph, Mo., from which to supply customers with flour on the same basis as that upon which they could purchase it from millers in Missouri.

The Kansas Flour Mills Company operates seven mills in Kansas and one in Oklahoma. Its witness testified that its Kansas mills had lost a number of sales in Oklahoma because of the different minima, while the sales of its Oklahoma mill have increased to a marked degree, and that his company is in active competition in Missouri with Missouri millers, in Iowa with Iowa millers, and also with Illinois millers for business in the territory east of the Mississippi River. He testified that if the minimum were made 40,000 pounds interstate and intrastate, the discrimination would be removed. This same witness appeared at the hearing before the Kansas commission and offered testimony in opposition to the carriers' application for permission to increase the intrastate minimum.

Members of the Kansas City Millers' Club are located at Atchison and Leavenworth, Kans., and St. Joseph and Kansas City, Mo. Approximately 85 per cent of their products are marketed at points east of the Mississippi River, both north and south of the Ohio River. Its witness testified that the average loading, both intrastate and interstate, of 6,000 cars of flour shipped by his company during the year 1914 was 36,200 pounds; that within the switching limits of Kansas City there are a number of flour mills, some of which are in Missouri and others in Kansas, and that as a rule the same rates apply from both sides of the river. Flour and other grain products, however, must move from Kansas City, Kans., to St. Louis and other points in Missouri on a 40,000-pound minimum, while from Kansas City, Mo., it moves to those destinations at the same rate, but on a 30,000-pound minimum. This witness also testified that there are ap-

proximately 194 mills in the state of Iowa that have an undue advantage over interstate shippers on business destined to points in Iowa.

This situation is illustrated by an exhibit reproduced in part below, which shows the rates, minima and per car earnings on flour from St. Joseph, Mo., and Atchison and Leavenworth, Kans., to points in Iowa on the Chicago, Burlington & Quincy Railroad and the Chicago Great Western Railway, and also the same information for intrastate traffic in Iowa. No actual points of origin or destination in Iowa are shown, but the distances used are approximately the same as those for the interstate hauls and the Iowa distance scale of rates and minima are applied. Rates are stated in cents per 100 pounds.

From—	Via—	Miles.	Minimum.	Rate.	Per car earnings.	Rates for similar distances in Iowa on Iowa distance scale.			
						Miles.	Minimum.	Rate.	Per car earnings.
St. Joseph, Mo., to—									
Hamburg, Iowa	C. B. & Q.	101	40,000	11.0	$44.00	100	24,000	8.1	$19.44
Stennett, Iowa	...do	152	40,000	10.5	42.00	150	24,000	9.5	22.80
Prole, Iowa	...do	198	40,000	9.0	36.00	200	24,000	10.8	25.92
Birmingham, Iowa	...do	249	40,000	10.5	42.00	249	24,000	12.5	29.38
Afton Junction, Iowa	C. G.W.	108	40,000	9.0	36.00	105	24,000	8.2	19.68
Des Moines, Iowa	...do	154	40,000	9.0	36.00	155	24,000	9.6	23.04
Melbourne, Iowa	...do	203	40,000	10.5	42.00	205	24,000	11.1	26.64
Cedar Falls, Iowa	...do	249	40,000	10.5	42.00	250	24,000	12.4	29.76
Atchison, Kans., to—									
Davis City, Iowa	C. B. & Q.	99	40,000	9.0	36.00	100	24,000	8.1	19.44
New Virginia, Iowa	...do	148	40,000	9.0	36.00	150	24,000	9.5	22.80
Bolton, Iowa	...do	200	40,000	10.5	42.00	200	24,000	10.8	25.92
Pilot Grove, Iowa	...do	250	40,000	10.5	42.00	250	24,000	12.2	29.38
Leavenworth, Kans., to—									
Blockton, Iowa	C. G. W.	101	40,000	9.0	36.00	105	24,000	8.2	19.68
Barney, Iowa	...do	153	40,000	9.0	36.00	155	24,000	9.6	23.04
Berwick, Iowa	...do	204	40,000	10.5	42.00	205	24,000	11.1	26.64
Marshalltown, Iowa	...do	253	40,000	10.5	42.00	250	24,000	12.4	29.76

At the hearing in October the same witness testified that the Southwestern Milling Company had lost considerable business in the states of Missouri, Iowa, and Kansas. He compared the shipments made to these three states during the year 1914 with the shipments made during the last of 1916 and the first half of 1917. This comparison shows a loss of 42.2 per cent in Iowa, 18 per cent in Missouri, and 55.5 per cent in Kansas. During the same period a mill at Leavenworth, Kans., lost 43 per cent of its business in the states of Iowa and Missouri. It is shown, however, that both these mills were running continuously and that the losses sustained in the states mentioned were more than counterbalanced by the increases in shipments to eastern destinations and for export. The witness stated that his company preferred domestic to export business because the latter will diminish considerably after the war and the present ab-

normal prices. These two mills were selected as representative of the mills members of the Kansas City Millers' Club.

The Southwestern Millers' League is an organization of millers who are located at points in Nebraska, Kansas, Colorado, Oklahoma, Missouri, and Texas. Its secretary testified that 50 per cent of the flour consumed in Oklahoma is milled in Kansas; that it has always been difficult for Kansas millers to compete in Oklahoma with local millers even when the interstate minimum was 30,000 pounds, but that since the difference has been increased to 16,000[1] pounds Kansas flour will practically be eliminated in the state of Oklahoma. An exhibit introduced by this witness shows that a number of mills in the state of Kansas are in active competition with millers located in other states short distances across the state line. As examples: Millers at Arkansas City, Kans., must compete with those at Ponca City, Okla., for business in the state of Oklahoma on a difference in minimum of 16,000[1] pounds. The difference in distance from these two points to a representative point in Oklahoma is only 25 miles. Topeka, Kans., is 71 miles from Kansas City, Mo., and Topeka millers are in competition with millers at Kansas City for business in St. Louis and other points in Missouri at a difference in minimum of 10,000 pounds. Millers at Concordia, Marysville, and Belleville, Kans., are in competition with millers short distances across the state line in Nebraska for business in that state. This same witness testified before the Kansas and Oklahoma commissions in opposition to the carriers' application for authority to increase the intrastate minimum.

A miller at Leavenworth, Kans., testified that since the 40,000-pound minimum had been established his competitors in other states have used that fact as an argument to their local dealers; that in the central part of Texas he will lose approximately 50 per cent of his business because his customers will be able to buy smaller carloads from Texas millers; that he will also lose business in Iowa, Missouri, and Oklahoma, because these states can produce flour which is just as satisfactory to their customers as is that milled in Kansas, and the difference in the minimum induces the local dealers to purchase smaller loads.

A miller at Schuyler, Nebr., testified that his interstate territory is partially in the states of Wyoming, South Dakota, Minnesota, Wisconsin, Illinois, Iowa, and at points in the east and southeast; that because of the difference in the minimum he will probably lose more than 25 customers in the state of Iowa and smaller numbers in the states of Wyoming, Colorado, South Dakota, and Wisconsin. He thought the minimum should be uniform, but that in certain sec-

[1] Difference now 10,000 pounds, due to increase in minimum in Oklahoma.

tions it should be no higher than 30,000 pounds. This same witness at a hearing before the Nebraska commission stated that he had no objection to the present interstate minimum of 40,000 pounds east of Omaha because conditions had adjusted themselves to that minimum.

As to the discrimination alleged with reference to the state of Illinois, it is shown that the strongest competition that Kansas and Missouri River millers have in the Mississippi Valley, southeastern, and Carolina territories is with millers in Illinois. From points in Illinois to destinations in Mississippi Valley territory joint rates are maintained on grain products, with a 30,000-pound minimum. The rates from Illinois points to Carolina and southeastern territories are principally made in combinations on the Ohio River, using a 40,000-pound minimum to the river plus an any-quantity rating beyond. Joint rates are maintained from the Missouri River crossings and other points in the territory of origin in question to Mississippi Valley territory, but there are no joint rates from these points of origin to Carolina or southeastern territory, such rates being made in combinations on the Ohio or Mississippi River. However, as the factor to the Ohio or Mississippi River requires a 40,000-pound minimum, this in effect prescribes the minimum for the through movement. The same rates and the any-quantity rating apply south of the Ohio River as apply on shipments originating in Illinois.

A witness engaged in general merchandise business at Cotton Plant, Ark., testified that he purchased his flour principally at Leavenworth, Kans., on a 40,000-pound minimum and because he has established a demand for this grade of flour in his locality he would like to continue handling it; that other dealers, with whom he is in competition, purchase their flour in Illinois on a 30,000-pound minimum; that the difference would amount to approximately $400 on a minimum carload, which is a serious disadvantage against him in favor of his competitor, because he has more money invested, more interest to pay, and has to equip himself with larger storage facilities. The testimony of a jobber located at Laurel, Miss., is substantially to the same effect, with the added statement that there is no difference in quality as between Illinois and Kansas flours. Millers located at the points of origin complained of testified as to their competition with Illinois mills and the disadvantage under which they labor in competing for business in Mississippi Valley, Carolina, and southeastern territories.

The St. Louis-San Francisco Railway and the St. Louis, Iron Mountain & Southern Railway participate in rates on grain products from certain points in southwestern Missouri under a 30,000-pound

minimum. Defendants explain that these points are intermediate to St. Louis and as a 30,000-pound minimum is applicable from that point, it can not be exceeded from intermediate points.

In the light of these facts complainants urge that under the decision of the Supreme Court in *Houston & Texas Ry.* v. *U. S.*, 234 U. S., 342, we should control the intrastate minimum, to the extent necessary to remove undue prejudice against interstate commerce.

With the exception of the interstate minimum applicable from Illinois to points south of the Ohio River defendants do not deny that the existing minima work a discrimination against interstate shippers. Their position is that since we approved a 40,000-pound minimum in the *Suspension Case*, *supra*, we should find that the lower minima prescribed by the various states are burdens upon interstate commerce which cause disadvantage to both carriers and the public in the waste of equipment, and which should be removed by increasing the state minima.

As illustrating what the carriers have done in the way of promoting efficiency defendants introduced an exhibit compiled from data taken from the semiannual report of the American Railway Association of November, 1914, which shows the increasing capacity of freight cars from 1902 to 1913, which we reproduce.

Per cent of all freight cars in service, by capacity, as of December 31.

Capacity.	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	Increase or decrease, 1913 over 1902.	
													In-crease.	De-crease.
40,000 pounds and less...	21.5	18.3	16.2	13.5	10.1	7.6	7.0	6.0	4.2	4.0	3.5	2.7	.....	18.8
Over 40,000 pounds and less than 60,000.....	16.1	14.8	14.2	13.1	10.9	9.1	7.7	6.3	5.4	5.3	4.3	3.5	.....	12.6
60,000 pounds and less than 80,000.....	43.4	43.5	43.8	43.6	42.4	41.1	41.5	42.9	40.4	39.8	37.5	34.9	.....	8.5
80,000 pounds and less than 100,000.....	13.7	16.3	17.9	20.3	23.1	25.3	25.8	26.7	28.5	31.3	32.9	35.6	21.9	.....
100,000 and over.....	5.3	7.1	7.9	9.5	13.5	16.9	18.0	18.1	21.5	19.6	21.8	23.3	18.0	.....

NOTE.—Total cars as of December 31, 1913, 1,847,777. Railroad mileage represented, 244,723.

It will be noted that the construction of cars of 40,000 pounds and 60,000 pounds capacity has decreased during this period, while the construction of cars of 80,000 pounds and 100,000 pounds capacity and over has substantially increased.

The following table, taken from one of defendants' exhibits, shows the average tonnage capacity of box cars and the per cent of increase during the periods named for six carriers operating in western trunk line territory:

Average tonnage capacity of freight box cars and per cent of increase for the railroads and the periods named.

	1915	1914	1908	1905	1904	Increase.
Atchison, Topeka & Santa Fe	33.6	.....	.....	.....	26.2	1915 over 1904, 29 per cent.
Chicago & North Western	37.3	.....	.....	29.2	.....	1915 over 1905, 28 per cent.
Chicago, Burlington & Quincy	39.0	38.5	32.3	.....	.....	1915 over 1908, 21 per cent.
Chicago, Milwaukee & St Paul	.....	33.4	.....	.....	25.2	1914 over 1904, 33 per cent.
Chicago, Rock Island & Pacific	36.5	36.1	32.3	27.5	.....	1915 over 1905, 23 per cent.
Illinois Central	39.8	.....	.....	33.1	.....	1915 over 1905, 20 per cent.
All railroads in the United States	.....	35.0	32.0	29.0	28.0	1914 over 1904, 25 per cent.

Defendants show that the average loading per car for all shipments of grain and grain products over the Santa Fe; the Chicago & North Western; the Burlington; the Chicago, Milwaukee & St. Paul; and the Rock Island roads for the year ended June, 1915, was as follows: Wheat, 36.7 tons; corn, 34.7 tons; oats, 29.3 tons; flour, 21.4 tons; other mill products, 20.1 tons.

The average loading per car of various commodities on the Rock Island, the Burlington, and the Santa Fe roads for the year 1915, as compared with the years 1906 for the Rock Island, 1905 for the Burlington, and 1904 for the Santa Fe, and the per cent of increase or decrease are also shown. It appears that on the Rock Island the average load has been increased—wheat, 22 per cent; corn, 20 per cent; flour, 15 per cent. On the Burlington the average load of wheat has increased 39 per cent; of corn, 25 per cent; and of flour, 14 per cent. On the Santa Fe the average load of wheat has increased 18 per cent; of corn, 11 per cent; and of flour has decreased 4 per cent.

In central freight association territory the minimum on wheat is 60,000 pounds and on flour it is 40,000 pounds, except as to cars having a marked capacity of less than 40,000 pounds, in which case the marked capacity governs. The minima on wheat and flour from central freight association territory to trunk line territory are, respectively, 60,000 pounds and 40,000 pounds. On export shipments from central freight association territory the minimum on flour in cars of 60,000 pounds capacity or more is 56,000 pounds. If the capacity of the car is less than 60,000 pounds the minimum is 85 per cent of the marked capacity but not less than 35,000 pounds.

With reference to the 30,000-pound minimum from points in Illinois to Mississippi Valley territory defendants explain that the situation is controlled by carriers operating south from the Ohio River. They assert that the Louisville & Nashville Railroad, the Mobile & Ohio Railroad, and the Southern Railway control the rates and minimum from the Ohio River; that the rates from St. Louis are differentially adjusted over the rates from the Ohio River crossings and the same minimum must be applied; that the Illinois Central,

the Iron Mountain, and the St. Louis-San Francisco meet the competition of these lines in the Mississippi Valley; that the Illinois Central extends to Chicago and that point is differentially adjusted with reference to St. Louis. It is therefore urged that the 30,000-pound minimum is beyond the control of the lines west of the Mississippi. Complainants do not contend that the present adjustment of minima from points east of the Indiana-Illinois state line is discriminatory against them.

The evidence clearly shows that complainants are at an undue disadvantage in competing with intrastate shippers of flour throughout certain of the states in which the materially lower intrastate minima apply. A large proportion of the retailers procure their flour as a general rule at intrastate points from which a minimum of 30,000 pounds or less applies in preference to obtaining it at interstate points from which the minimum is 40,000 pounds. The reasons for this preference are obvious and it necessarily results in interstate shippers being forced to compete upon unjust terms with their intrastate rivals or to seek other markets. There is no substantial dissimilarity in the circumstances and conditions surrounding the interstate and the intrastate minima. The plea of commercial necessity for a lower minimum which prevailed in the proceedings before many of the state commissions applies equally to interstate traffic and therefore is no answer to the allegation of undue preference. It was fully considered and rejected in the *Suspension Case*, *supra*, and upon the facts of record herein we affirm our finding in that case that the carriers have justified a 40,000-pound minimum on grain products. In so far as the states of Illinois and Wisconsin are concerned, any undue prejudice which may have existed has been removed by increasing the intrastate minimum to that applicable on interstate traffic. In certain other states the disadvantage complained of has been lessened but not wholly abated by the action of the state authorities in permitting increases in the intrastate minima.

It is suggested that in order to accommodate the shipper who desires to move a small load varying minima dependent upon the sizes of the cars used should be provided, together with a reasonably adequate supply of cars of the respective sizes, to meet the needs of different communities and different kinds of traffic; that the millers and dealers in the larger places can, without hardship, make shipments of 40,000 or 60,000 pounds or more, which the local dealer in the smaller places can not well do; and that it is proper that the big man with the large order should use a large car with a correspondingly high minimum and the smaller dealer be provided with a small car and correspondingly lower minimum. There would seem to be

two complete answers to these suggestions: (*a*) That any minimum weight stated in the tariff must be available and applicable alike to all shippers; and (*b*) that under such a plan it would be impossible to utilize cars with reasonable economy or efficiency. If a large load were offered and a large car not promptly available two smaller cars would have to be furnished, and if a small load were offered and a small car were not available a large car would have to be used on the basis of the minimum weight applicable to the car ordered. The big shipper would not confine himself to the shipment of large loads; he would accommodate the wishes of his customers and his own convenience in the matter of loading by exercising the right, which could not be denied him, of ordering a car of any size for which the carrier's tariff provided a minimum.

In *Houston & Texas Ry.* v. *U. S.*, *supra*, the Supreme Court held that it is within our power and it is our duty to remove all unjust discriminations against interstate traffic caused by state rates. This same authority and duty exists for the removal of unjust discrimination brought about by different carload minima. Upon consideration of all the facts of record we are of opinion and find that it is unduly prejudicial to complainants and to interstate commerce and unduly preferential of their competitors and of intrastate commerce for defendants to maintain and apply a higher interstate minimum on flour, in carloads, from points in the states of Kansas, Nebraska, Oklahoma, Texas, Arkansas, Missouri, and Iowa to destinations in those states than they contemporaneously maintain and apply to the intrastate transportation of flour, in carloads, within those states, or any of them.

The record does not justify a finding of undue prejudice with reference to the minima existing in the states of Minnesota and Louisiana.

With reference to the question of whether or not the 40,000-pound minimum applicable on shipments from this territory to points in the Mississippi Valley is unduly prejudicial as compared with the 30,000-pound minimum applicable from Illinois to points in the Mississippi Valley territory, it appears that the Illinois Central, the St. Louis-San Francisco, the Iron Mountain, and carriers in the state of Mississippi participate in a 40,000-pound minimum from points on the Missouri River and in the state of Kansas, and contemporaneously apply a 30,000-pound minimum from points in Illinois to the same territory. No justification for this appears. We are of opinion, and find, that the 40,000-pound minimum from the Missouri River and points in the state of Kansas to destinations in Mississippi Valley territory is unduly prejudicial to complainants and that the 30,000-pound minimum from Illinois to the same desti-

nation territory is unduly preferential of their competitors in Illinois. The evidence does not warrant a finding of undue prejudice in this particular against other points or states enumerated in the complaint.

The situation with reference to the 40,000-pound minimum from the complaining points of origin to Carolina and southeastern territories is different. It appears that these rates on grain products are made in combination on the Ohio or Mississippi River and that the lines making and controlling the rates south of the Ohio and east of the Mississippi River do not participate in joint rates from the territory in question. Further, it does not appear that the lines operating from this territory to the Ohio River carry a higher minimum than do the lines operating from points in Illinois to the Ohio River on business to the southeast. We are of opinion, therefore, that the 40,000-pound minimum from the territory in question to destinations in southeastern and Carolina territories has not been shown to be unduly prejudicial.

In *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 41 I. C. C., 83; 48 I. C. C., 312, we prescribed as maximum a minimum of 30,000 pounds on flour and other grain products between Shreveport, La., and points in Texas. This was the minimum then applicable within Texas as well as on traffic between Shreveport and Texas. The reasonableness of that minimum was not particularly considered, as the primary question presented by the complaint was the broad issue of discrimination against Shreveport and interstate commerce in favor of Texas intrastate traffic resulting from the relationship of class and commodity rates in general. In the *Suspension Case*, *supra*, we had already found that a minimum of 40,000 pounds was reasonable. That finding has been affirmed upon the present record, and defendants have been ordered to remove the undue prejudice against complainants and interstate commerce arising from the maintenance of a lower minimum on flour within Texas. Should this result in an increase in the minimum between points in Texas the minimum between Shreveport and points in Texas should be correspondingly increased, and defendants may apply for any requisite modification of our order in that proceeding.

While, as stated, the evidence relates almost entirely to the minima on flour, and our findings therefore are necessarily so limited, we are not to be understood as approving any material changes in established relationships between the minimum on flour and that on other grain products. An appropriate order will be entered.

MEYER, *Commissioner*, concurring:

I concur in the finding of discrimination, arising out of differences between the minimum weights applied on intrastate and interstate

business respectively and the views relating thereto expressed in the report. However, I do not wish to have my concurrence in this, the fundamental feature of the case, interpreted as an approval of the principle of a flat minimum applicable to all sizes of cars. In my judgment the correct rule is to vary the minimum with the size of cars, illustrated by rule 6 (*b*) of the western classification, and to provide a reasonably adequate supply of cars of the respective sizes governed by the needs of different communities and different kinds of traffic. The minimum weight applicable to shipments of different commodities in different sizes of cars is one of the most fundamental matters connected with transportation.

The instant case deals only with grain products, and I shall restrict my observations to that traffic. It is obvious that a minimum of 40,000 pounds on flour and other grain products is excessive for small box cars and too low for large box cars, the latter resulting in wasteful transportation. Generally speaking the miller and the dealer in flour and feed in larger places can ship without hardship not only 40,000 but 60,000 pounds and more if the car is large enough. Not so with the local general merchant or dealer in flour and feed in the smaller places. Relatively speaking, the latter are little men and their orders are small. It is proper that the big man with the big order should have a big car. There is no injustice in requiring him to use a big car with a correspondingly high minimum. On the other hand, within reasonable limits, the little man with the little order is entitled to a small box car, and there is injustice in compelling him to use a large car with a high minimum in excess of the quantities which, as a practical matter, he can dispose of without loss in the community which he serves; or if he can not ship in carload quantities what he needs for the people he serves he must order in less-than-carload quantities with a corresponding increase in the price of grain products to the respective consumers.

In so far as the use of larger cars with higher minimums results in economies, their use should be extended, of course, within the limits of reasonably adequate service at reasonable charges to the respective communities. There is grave doubt whether the relatively greater increases in the number of the larger sizes of cars has generally reduced the cost of transportation, as is attested by the following figures:

Year.	Average freight car capacity.	Average load per car.	Per cent.
	Tons.	*Tons.*	
1916, Dec. 31	40.8	[1] 22.8	55.9
1916, June 30	40.5	[1] 22.4	55.3
1915	39.7	[1] 21.1	53.1
1914	[1] 39	[1] 21.1	54.1
1913	[1] 38	[1] 21.1	55.5
1912	[2] 37	[2] 20.2	54.6
1911	[2] 37	[2] 19.7	53.2
1910	[2] 36	[2] 19.8	55
1909	[2] 35	[2] 19.3	55.1
1908	35	[2] 19.6	56
1907	34	19.7	57.9
1906	32	18.9	59.1
1905	31	18.1	58.4
1904	30	17.7	59
1903	29	17.6	60.7
1902	28	16.9	60.4

[1] Represents average for class I and class II carriers.
[2] Represents average for class I, class II, and class III carriers.

The above figures doubtless have their limitations. Additional data are necessary for a sound judgment regarding certain features of this problem of the large car. However, enough information is available to warrant the statement that the forced extension of the use of the large box car and the practical elimination of the small box car is a policy of doubtful wisdom. I refer here only to transportation under normal conditions, without reference to war measures in times of war.

Other things being equal, the small box cars meet the needs of the less populous communities, in which the absolute quantities of grain products consumed are relatively small. Of such communities there are many in all parts of the United States. In some of them railway companies maintain station agents, but the relatively large number of nonagency stations emphasizes the importance of keeping in view the legitimate requirements for grain products of people in remote sections of the country. The following table is illustrative:

	Agency stations.	Nonagency stations.
C., M. & St. P. Ry.:		
Iowa	297	71
Minnesota	176	45
South Dakota	163	42
Wisconsin	340	187
Total	976	345
C. & N. W. Ry.: Nebraska	131	17
Total	131	17
C., St. P. M. & O. Ry.: Nebraska	41	6
Total	41	6

	Agency stations.	Nonagency stations.
C., B. & Q. R. R.:		
Nebraska	319	100
Kansas	21	9
Total	340	109
U. P. R. R.:		
Nebraska	140	87
Kansas	159	70
Total	299	157
C., R. I. & P. Ry.:		
Nebraska	37	2
Kansas	148	16
Total	185	18
Total	1,972	642

The language used by the Commission in the *Western Classification Case*, 25 I. C. C., 442, at pages 482, 483, and 607, is applicable here, from which I quote the following:

* * * If it is in the interest of efficient and economical railway operation to increase the size of cars used, such rate of increase should not exceed the ability of business to adapt itself to the larger cars. * * * Generally speaking, freight cars should be made to fit the business. Within reasonable limits business may be required to adapt itself to the car, but when there is a conflict between the increased size of the car and the necessities of business, business may not be required unreasonably to adapt itself to the car. Statistics for the United States, as well as for leading countries of Europe, show that increases in the size of cars have been accompanied by less economical utilization of car space. * * * The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in the establishment of minimum weights at that time.

I am authorized to say that COMMISSIONER WOOLLEY concurs in these views.

INVESTIGATION AND SUSPENSION DOCKET No. 1129.

GRAIN RESHIPPED FROM PEORIA.

Submitted March 29, 1918. Decided May 9, 1918.

Proposed cancellation of reshipping rates on grain and grain products from Peoria and Pekin, Ill., to eastern trunk line territory via routes embracing portions of the Illinois Central Railroad found to be justified.

A. P. Humburg for respondent.

W. M. Hopkins for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

Certain items in supplements 23 and 24, Illinois Central tariff I. C. C. No. A-8875, filed to become effective September 12, 1917, provide for the cancellation of domestic and export reshipping rates on grain and grain products from Peoria and Pekin, Ill., to the Atlantic seaboard and domestic rates to other points in eastern trunk line territory. Protest was filed against the proposed cancellation of these rates by the Peoria Board of Trade, and by appropriate orders the schedules by which it was proposed to effect the cancellation were suspended until July 10, 1918.

Rates will be stated in cents per 100 pounds. The present reshipping rate on grain, from Peoria to New York, for example, is 18.3 cents, applicable on grain coming from points in Illinois from which joint rates are not published. A similar rate of 12 cents is published to Buffalo, N. Y. The reshipping export rate from Peoria to New York is 16.8 cents. These reshipping rates also apply upon grain coming from certain points in Arizona, Arkansas, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Wyoming, and Mexico. Reshipping rates are also published from Peoria of 17.3 cents and 15.8 cents to New York for domestic and export, respectively, applicable on grain from certain points in Iowa and Minnesota. Reshipping rates of 16.8 cents and 15.3 cents are applied from Peoria to New York for domestic and export, respectively, on grain coming from certain points in Idaho, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. A large portion of the grain-producing section of Illinois lies within a rate group

known as group No. 10, in which Peoria is situated. This group is approximately 200 miles in length, extending from Rockford on the north to Mount Vernon on the south. Although irregular in shape, it is approximately 125 miles wide, extending from a point just west of Danville on the east to and including Havana on the west.

From a very large percentage of the stations within this group joint rates on grain are published to trunk line territory which are the same from all points in the group. The joint rates from points in this group, to New York, for example, are 23.8 cents. The joint rates applied to trunk line territory from points in this group permit the routing of grain via Peoria and Pekin, and its stoppage at such points for cleaning, milling, elevating, and other purposes.

If the Illinois Central is permitted to cancel the reshipping rates from Peoria and Pekin the resulting rates applicable to grain reshipped from such points will be the group rates.

On grain from points in Illinois from which joint rates are not published and on grain from other states, the proposed cancellation of the reshipping rates has the effect of increasing the rates applicable through Peoria via routes that embrace the line of the Illinois Central east of Peoria. The amount of the increase so resulting is represented by the difference between the joint rate from a point in group 10 and the reshipping rate, amounting to from 5.5 to 7 cents.

The respondent urges that the proposed cancellation is justified upon the following grounds:

First. It is asserted that the maintenance of the present proportional or reshipping rates is a menace to the continuance of the present through rate adjustment from the Illinois territory to the eastern trunk line territory. It is not clearly explained in the record just why the reshipping rates are considered a menace to the maintenance of the through group rates, unless it may be inferred from the fact that from certain points from which joint rates are not published the local rates to Peoria are less than the difference between the through published group rates and the reshipping rate. For example, if the local rate to Peoria from a given point is 4 cents the domestic rate available from this point to New York, using the local to Peoria and the reshipping rate out, would amount to 22.3 cents. This is less than the joint rate published from Peoria and from points east of Peoria within the 23.8 cents group and intermediate by several routes to trunk line territory. In such instances the rates are violative of the fourth section, and no justification has been offered for their continuance.

Second. The respondent urges its desire to remove discrimination against other markets which the Commission in the *Cairo Board of Trade* v. *C., C. C. & St. L. Ry. Co.*, 46 I. C. C., 343, found to be undue. In that case the Commission held that the maintenance of reshipping rates from Peoria and certain other points but not from Cairo was unduly prejudicial to Cairo and unjustly preferential of other markets.

Third. It is urged that the Illinois Central Railroad is mainly a north and south line, and that its routes to eastern trunk line territory are circuitous as compared with the short lines.

Litchfield, Decatur, Vandalia, Monticello, Sullivan, and Randolph, Ill., are asserted to be representative points in group 10, which includes Peoria. Rates from these points to eastern trunk line territory apply via Peoria with transit privileges thereat. The short-line distance from Litchfield to Buffalo is 674 miles, as compared with the route through Peoria of 786 miles and through Chicago of 761 miles. The distance from Decatur to Baltimore is 860 miles by the short line and 966 miles by the route through Chicago or the route through Peoria. The distance from Vandalia to New York via the short line is 969 miles as compared with 1,139 miles via routes through Chicago or Peoria. The distance from Monticello to Buffalo is 615 miles via the short line and 671 miles via the route through Chicago and 759 miles via the route through Peoria. The distance from Sullivan to Baltimore is 880 miles via the short line and 983 miles via the route through Chicago and 993 miles via the route through Peoria. The distance from Randolph to New York is 991 miles via the short line and 1,055 miles via the route through Chicago and 1,081 miles via the route through Peoria.

Fourth. It is urged that the revenue received by the Illinois Central as its proportion of the reshipping rates is insufficient and unremunerative, not because the divisions as between the carriers are unfair but because the rates themselves are so low. It was shown that during the six months ended June 30, 1917, the Illinois Central Railroad transported 46 cars of grain from Peoria or Pekin to eastern trunk line territory. The average haul per car was 107.5 miles. The average net weight per car was 72,654 pounds. The average revenue per car accruing to the Illinois Central was $22.75, or 3.1 mills per ton-mile. Out of the $22.75 received on each car the respondent absorbed an elevator charge of approximately $3 per car. Between Pekin and Peoria it uses the track of the Peoria & Pekin Union Railway and pays for this use $2 per car. The Illinois Central Railroad Company pays out in damage claims on grain traffic about 5 per cent of its receipts on such traffic. It thus appears that the net revenue accruing to the Illinois Central on each car is approximately $17.75 for an average haul of 107.5 miles.

Fifth. The tentative report of the examiner in Docket No. 8347 holds that it is violative of the fourth section to apply through rates via Peoria to trunk line territory from points in Illinois which are higher than the local rate to Peoria added to the reshipping rate from Peoria to trunk line territory. The respondent does not admit that such rates are in violation of the fourth section, but should the Commission so hold it desires to correct such violations by the cancellation of these reshipping rates.

Sixth. It is asserted that the cancellation proposed would not deprive the Peoria shippers of the use of the same rates via other and more direct routes such as the Toledo, Peoria & Western; Cleveland, Cincinnati, Chicago & St. Louis; Lake Erie & Western Railroad.

Seventh. If the proposed cancellation of the reshipping rates is permitted it is urged that the resulting rates applicable to this traffic via the line of the Illinois Central Railroad will not be unreasonable. The joint rate to New York from points in this group, of 23.8 cents for hauls of approximately 1,100 miles and the rate of 17 cents to Buffalo for a haul of from 670 to 780 miles are compared with certain rates shown below. The comparisons are here shown although there is no foundation in this record for concluding that the circumstances and conditions on the routes here shown are comparable with the conditions existing on routes from Peoria to points in trunk line territory.

From—	To—	Miles.	Wheat.	Other grain.
			Cents.	*Cents.*
Champaign, Ill	Nashville, Tenn	331	18	18
Do	Birmingham, Ala	538	30	30
Do	Chattanooga, Tenn	483	29	29
Grand Island, Nebr	Chicago	648	25.6	22.9
Do	Minneapolis, Minn	531	24.6	21.9
Grayling, Mich	Buffalo, N. Y	464	15.8	15.8
Do	New York	875	23.6	23.6

It is urged on behalf of the protestant that the reshipping rates from Peoria to eastern frunk line territory have been in effect for many years by the line of the Illinois Central Railroad, and if such rates are canceled by that route they will still continue by other routes and that they are not now any more of a menace to the joint rates than they heretofore have been. It is also urged that the discrimination against Cairo may be removed by the publication of reshipping rates from that point to eastern trunk line territory. It is admitted that the Illinois Central is in the main a north and south line and that its routes to eastern trunk line territory are circuitous; but it is stated that the respondent could haul this traffic from Peoria to Decatur, 77 miles, and turn it over at that point to

the Pennsylvania lines, and that the route so afforded is only approximately 50 miles longer than the short line from Peoria. It is further urged that the Illinois Central maintains reshipping rates on grain from Peoria and other markets to points in the southeast and Mississippi Valley territory; that reshipping rates are maintained from Omaha, Nebr., to Peoria, Chicago, Evansville, Ind., Cincinnati, Ohio, and Louisville, Ky.; from Sioux City Iowa, to East Dubuque, Ill.; and from Omaha to Memphis, Tenn., New Orleans, La., and Mobile, Ala. It is shown that the combination of the interstate rate from many points in Illinois to Peoria with the reshipping rate from Peoria to eastern trunk line territory makes less than the joint rate by amounts varying from half a cent to 2 cents per 100 pounds. In so far as the joint rates exceed such combination they are alleged to be unreasonable. It is claimed that the rates resulting from the cancellation of the reshipping rates applicable to shipments from points in Illinois from which joint rates are not now published would be unreasonable and unjust for this traffic. The principal reason, however, urged by the protestant against the cancellation of these reshipping rates is that it desires to keep open for its use all the routes on grain and the facilities for its transportation now existing. It is urged that at times when a car shortage exists it is advantageous for shippers at Peoria and Pekin to be able to draw upon the car supply of the Illinois Central as well as upon that of the other lines.

SUGGESTED CONCLUSIONS.

1. The relation between the present rates from points from which through rates are not published available for the movement of grain from these points via Peoria to eastern trunk line territory and the through rates from intermediate points is violative of the fourth section by reason of the fact that such rates are lower from more distant than from intermediate points.

2. No justification has been offered for this unlawful relation.

3. The present reshipping rates on grain from Peoria and Pekin to eastern trunk line territory are unreasonably low for application via the routes afforded by the Illinois Central Railroad.

4. The revenue derived from this traffic by this respondent is not sufficient to justify us in requiring its continuance therein.

5. No serious hardship has been shown as likely to result to the protestant herein by the cancellation of these reshipping rates via the routes of the Illinois Central.

6. The order of suspension should be vacated.

HARLAN, *Commissioner:*

The exceptions filed by the protestant suggest no error or inaccuracy in the foregoing statement of facts by the examiner; it is asserted, however, that conclusions 3, 4, 5, and 6 as proposed by the examiner are not justified by the facts shown of record. Our examination of the evidence adduced leads us, however, to conclude that the disposition of the proceeding proposed by the examiner is in all particulars fully warranted. Since the filing of the proposed report the reshipping rate on grain of 18.3 cents from Peoria to New York has been increased to 21 cents and the group rate of 23.8 cents has been increased to 26½ cents. It is possible that under these circumstances the Illinois Central Railroad may desire to continue in this traffic although to do so will apparently necessitate the reduction of the through rates from some of the points in the group in order to avoid fourth section violations. Some of the rates have been increased, but we do not believe that the circumstances are such that we should require the respondent to continue in this traffic unless it desires to do so. An order will be entered in conformity with these views.

INVESTIGATION AND SUSPENSION DOCKET No. 1112.

LUMBER FROM THE SOUTHEAST.

Submitted April 30, 1918. Decided May 28, 1918.

1. Proposed cancellations of routes for the movement of lumber, under joint rates, from points on the Seaboard Air Line and the Atlantic Coast Line to eastern port cities and interior eastern territory, through Petersburg and Richmond, Va., and Hagerstown, Md., justified in part.
2. Proposed cancellation of the route through Florence, S. C., Wadesboro, N. C., and Hagerstown, Md., on lumber from Atlantic Coast Line points, north and east of the line from Wadesboro to Charleston, S. C., justified.

R. Walton Moore, *Merrel P. Callaway*, and *Frank W. Gwathmey* for Seaboard Air Line Railway Company, Atlantic Coast Line Railroad Company, and Norfolk & Western Railway Company.

Claude W. Owen for protestants.

Eric E. Ebert for Trexler Lumber Company.

T. Noel Butler for Wistar, Underhill & Nixon.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

For many years the normal movement of lumber from stations on the Seaboard Air Line and Atlantic Coast Line railroads in the Carolinas, Georgia, Florida, and Alabama, when destined to eastern port cities and interior eastern territory as far west as Pittsburgh, has been through the two main gateways of Norfolk and Potomac Yard, Va. The northern termini of these lines, hereinafter referred to as the Seaboard and the Coast Line, respectively, are Norfolk and Richmond, Va. Beyond Richmond the traffic moves to Potomac Yard over the Richmond, Fredericksburg & Potomac and Washington Southern railroads or over the Chesapeake & Ohio Railway through Gordonsville, Va.

Tariffs containing the joint rates from the southern mills to the northern and eastern points include many points of origin and destination, though but few specific routing restrictions are provided. In the latter part of 1916, because of heavy congestion of traffic on the eastern lines and at the eastern terminals, brought about by war conditions, embargoes were placed against the movement of lumber through the Norfolk and Potomac Yard gateways, which have been maintained almost continuously, and the traffic has been moved only upon the issue of permits. Due to these conditions, lumber shippers sought an outlet through Hagerstown, Md., availing themselves of

the unlimited routing provisions of the tariffs. Hagerstown is the northern terminus of the Norfolk & Western Railway, where connection is made with the Baltimore & Ohio Railroad, the Western Maryland Railway, and the Cumberland Valley Railroad. The movement of this traffic through Hagerstown involves delivery at Richmond or Norfolk to the Chesapeake & Ohio, and movement thence to Basic, Va., the junction with the Norfolk & Western, or delivery to the latter line at Norfolk or Petersburg, Va., and movement via Roanoke to Hagerstown; or delivery to the Winston-Salem Southbound Railroad at Wadesboro, N. C., and movement thence to Winston-Salem, the junction with the Norfolk & Western. For the purpose of limiting the availability of the Hagerstown route, the Coast Line and the Seaboard filed supplements to their respective lumber tariffs to become effective August 18, 1917, and August 25, 1917, proposing certain restrictions as to the application of the joint rates, which provoked protests from various shippers or receivers of lumber. These supplements were suspended until December 16, 1917, and later until June 16, 1918. While both supplements, to a large extent, reflect the same underlying purpose, the questions presented require separate consideration.

Respondents assert that the immediate purposes of the suspended Coast Line supplement are twofold: (1) To make plain the provisions and intent of the tariffs as they now stand with regard to the availability of certain routes through Petersburg and Richmond; and (2) to preclude the application of the present through rates from Coast Line points in North Carolina and the extreme northern part of South Carolina via Wadesboro, and the Norfolk & Western through Hagerstown.

The joint rates are based upon the rates of the southern lines to the gateways, plus so-called specifics or arbitraries fixed by the direct lines north of the gateways. The Coast Line's present tariff includes many participating carriers, some of which form various routes from the south to the north and east. With respect to the rates contained therein, there are shown the arbitraries to be allowed connecting lines beyond the gateways. Respondents insist that the publication of the arbitraries designated the only available routes. For example, if an arbitrary is shown beyond Petersburg, it indicates that traffic will be handled in connection with the Norfolk & Western through Petersburg and Roanoke. Arbitraries shown beyond Hagerstown indicate that traffic may be routed via Wadesboro and Norfolk & Western through Hagerstown, but not through Petersburg, unless an arbitrary is also shown beyond that point. Under their interpretation respondents argue that the suspended supplement did not propose the cancellation of any existing

routes or rates, but merely clarified the original tariff as to its routing restrictions. Protestants contend that traffic may be routed through Petersburg and Hagerstown if an arbitrary is shown beyond the latter point, and even though none is shown beyond Petersburg, and that the proposed supplement would operate to close that route.

The appearance in a tariff of arbitraries to be allowed connecting carriers beyond a certain gateway does not define the route to be used in reaching that gateway. It follows, therefore, that the original tariff of the Coast Line did and does now permit routing via Petersburg over the Norfolk & Western through Hagerstown, and that the supplement under suspension proposes to cancel that route except in instances where an arbitrary is also shown beyond Petersburg. The same would be true as to the route through Richmond, Basic, and Hagerstown, in connection with the Chesapeake & Ohio and the Norfolk & Western, where arbitraries are not shown beyond Richmond but are shown beyond Hagerstown.

Though respondents assumed the attitude that no existing routes for traffic from Coast Line points through Petersburg and Roanoke were to be canceled, evidence was offered regarding the disinclination of the Norfolk & Western to participate in traffic received by it at Petersburg destined to points on the northern and eastern lines. It is urged by that respondent that its line is completely overwhelmed as a result of the war; that the movement of lumber to the east through Petersburg and Roanoke means a serious loss of transportation efficiency; and that the accommodation of government traffic has so congested its rails that it has been necessary in the past to embargo other commerce. During the nine months preceding the hearing, 11 distinct embargoes were placed on traffic from points on the Norfolk & Western through Hagerstown, totaling 97 days, and 13 embargoes on traffic from connecting lines, totaling 146 days. In most instances the embargoes applied to both classes of traffic.

Owing to the method of constructing the rates and distributing the revenue among the carriers, the Norfolk & Western insists that its participation in rates through Petersburg is very unprofitable. The distance from Petersburg to Hagerstown is 416 miles. The arbitraries of the northern lines are the same beyond Hagerstown as beyond Potomac Yard, which is 135 miles directly north of Petersburg. With the northern lines' arbitrary and the Coast Line's rate deducted from the through rate, but little is left as the Norfolk & Western's proportion for a haul of 416 miles. Notwithstanding the testimony regarding the impracticability of the Petersburg route, witness for this respondent acknowledged that it would not be an objectionable route if remunerative earnings could be secured. Under the present Coast Line tariff, as construed by respondents, traf-

fic may move via Petersburg and the Norfolk & Western to points on the Cumberland Valley Railroad and the Buffalo, Rochester & Pittsburgh Railway, and the suspended supplement proposes no withdrawal of these routes. It is not believed that the evidence justifies a withdrawal of the available routes through Petersburg in connection with the Norfolk & Western, and it is recommended that the proposed cancellation be denied. No change is proposed in the Coast Line tariff concerning the Richmond gateway.

A line of the Coast Line extends in a southerly direction from Wadesboro to Charleston, S. C., crossing the main line at Florence and Darlington, S. C. We will refer to it as the Wadesboro-Charleston line. This line connects at Wadesboro with the Winston-Salem Southbound Railroad, which in turn connects at Winston-Salem with the Norfolk & Western, thus completing a route to Hagerstown. For several years a considerable amount of traffic originating on and south of the Wadesboro-Charleston line has been handled over this route, but from territory north and east of the line traffic destined to northern and eastern markets has been moved through Richmond and Norfolk. This custom has not been governed by routing restrictions contained in tariffs and, as an escape from the congested conditions and the embargoes at the Virginia gateways, various lumber shipments originating in the territory north and east of the Wadesboro-Charleston line, hereinafter referred to as the excluded area, have been tendered the Coast Line routed via Wadesboro and Hagerstown, and some shipments have moved over that route.

The second question presented by the suspended Coast Line supplement is the proposed cancellation of that route as to such traffic. With but few exceptions, shipments originating in the excluded area involve a southbound haul over the Coast Line to Florence and Darlington, thence northwardly to Wadesboro, where delivery is made to the Coast Line's connections. Respondents maintain that this route is unnatural, circuitous, and unreasonable; that from most of the excluded area the originating carrier is short-hauled, and, moreover, must divide with an increased number of carriers a noncompensatory revenue, whereas on movements over its own rails to Richmond or Norfolk it receives the entire proportions to those gateways. As an instance, from Wilmington, N. C., to Richmond the Coast Line's short-line haul is 244 miles, for which it receives 9 cents out of the through rates. The line of the same respondent to Wadesboro is 175 miles. After deducting the arbitraries of the northern lines from the through rates, the remainder, divided between the three carriers south of Hagerstown, leaves the Coast Line 3.3 cents per 100 pounds for its service.

Protestants insist that mills located in the excluded area would suffer because of the disadvantage to which they would be subjected in competing with mills located south and west of the Wadesboro-Charleston line. The disadvantage is said to lie in the ability of their competitors to utilize three channels for traffic, whereas but two are available to protestants. The preceding finding, if approved, would restrain the cancellation of the Petersburg route; therefore, shippers in the excluded area would have the use of a third outlet, and while the protestants' competitors would be likewise benefited, it is not believed that their fortune in location would result in undue prejudice to the mills north and east of the Wadesboro-Charleston line. As to the proposed restriction against the route through Wadesboro the examiner recommends that the suspension be vacated.

Joint rates on lumber from points on the Seaboard Air Line to northern and eastern destinations are and have been constructed in the manner previously stated regarding Coast Line rates. The Seaboard's tariff contained no definite routing restrictions, but as heretofore stated the normal movement has for many years been through Norfolk and Potomac Yard. Due to congestion and consequent embargoes on these routes, many shipments have been routed through Richmond, thence over the Chesapake & Ohio to Basic, Va., and Norfolk & Western to Hagerstown for movement beyond. The Seaboard proposes the elimination of the latter route as to traffic destined to points on the Baltimore & Ohio Railroad, Cumberland & Pennsylvania Railroad, Monongahela Railway, Lehigh Valley Railroad, Pittsburgh & Lake Erie Railroad, Buffalo, Rochester & Pittsburgh Railway, Easton & Northern Railroad, Morgantown & Kingwood Railroad, Susquehanna, Bloomsburg & Berwick Railroad, and one station, Berwick, Pa., on the Delaware, Lackawanna & Western Railroad; also to stations on the Western Maryland, the Philadelphia & Reading, and Central of New Jersey railroads, when the movement beyond Hagerstown is over the Cumberland Valley Railroad.

Respondents state that no working or divisional arrangements exist between the southern lines and their northern connections on traffic moving through Hagerstown to the above destinations; that the use of that route was not contemplated when the rates were established; and that the unrestricted use of the Hagerstown gateway for shipments which should route through Norfolk and Potomac Yard would seriously hamper the handling of traffic normally passing through Hagerstown.

As to traffic destined to points on the Western Maryland, the Philadelphia & Reading, and the Central Railroad of New Jersey, when the movement beyond Hagerstown is by the Western Maryland no change is proposed. In order that the Western Maryland might participate in lumber traffic from the south and receive such traffic at its

logical junction, divisional arrangements have for some time been in effect, though no such arrangements are maintained in connection with the Cumberland Valley.

To Baltimore & Ohio stations there are at present various routes north of Richmond. The one through Hagerstown over the Chesapeake & Ohio and the Norfolk & Western through Basic, hereinafter called the Basic route, intersects the Baltimore & Ohio main line at Shenandoah Junction, W. Va., and passes on to Hagerstown 23 miles beyond. Traffic delivered to the Baltimore & Ohio at that point must be hauled back 24 miles over a branch line to Weverton, Md., the junction with its main line. To stations east of Weverton, which is 10 miles east of Shenandoah Junction, this route entails an unnecessary haul of 37 miles on traffic which could readily be handled through Shenandoah Junction. Traffic destined to points west of Shenandoah Junction, and routed via Hagerstown, must traverse three sides of a triangle, a distance of 57 miles, and for a second time pass through Shenandoah Junction. The Basic route to Baltimore & Ohio points in connection with the Cumberland Valley at Hagerstown presents a similar situation to the one just stated. The latter line extends southwestwardly from Hagerstown and connects with the former line at Martinsburg, W. Va., which is 12 miles west of Shenandoah Junction. Protestants offered no objection to cancellation of these routes provided the routes through Shenandoah Junction remain open. Respondents have not proposed cancellation of the routes through that junction.

To stations on the Buffalo, Rochester & Pittsburgh and the Pittsburgh & Lake Erie, respondents propose cancellation of the routes through Hagerstown in connection with both the Cumberland Valley and the Western Maryland. Protestants acceded to the withdrawal of these two routes with the understanding and assurance that the route through Shenandoah Junction is to be unaffected. With the several other routes from Seaboard points now available to stations on the Buffalo, Rochester & Pittsburgh and the Pittsburgh & Lake Erie the action of respondents seems to be justified, and it is recommended that the suspension as to the routes via Hagerstown in connection with the Cumberland Valley and the Western Maryland be vacated. Stations on the Cumberland & Pennsylvania, the Morgantown & Kingwood, and the Monongahela railroads may be reached through various routes other than those through Hagerstown, and protestants are also agreeable to the cancellation of the latter. The cancellation of the suspension in this respect is also recommended.

With regard to the Seaboard's proposed cancellation of the Basic route through Hagerstown to stations on the Lehigh Valley, the Easton & Northern, the Susquehana, Bloomsburg & Berwick, and to Berwick, on the Delaware, Lackawanna & Western; also to stations

on the Philadelphia & Reading and the Central Railroad of New Jersey when the movement beyond Hagerstown is over the Cumberland Valley, it is suggested that the cancellation would bring about unlawful discriminations; that stations on the Philadelphia & Reading and the Central Railroad of New Jersey would be accessible through the Hagerstown gateway to the disadvantage of Lehigh Valley points; and that the situation as to the Easton & Northern and the Susquehanna, Bloomsburg & Berwick is similar to that surrounding the Lehigh Valley. As an instance, mills located at Wilkes-Barre, Pa., on the Central of New Jersey, could secure routing through Hagerstown and the Western Maryland, whereas competing mills in the same city located on the Lehigh Valley would be denied that route. This is true as to many points. Respondents' only defense to such a situation is that their divisions only apply in connection with lines that lead through the Western Maryland, and that the mills under the disadvantage are located on the wrong road. The examiner recommends that the cancellation of the above routes be not permitted.

CLARK, *Commissioner:*

The foregoing is essentially the report proposed by the examiner and served upon the parties. Exceptions thereto were filed by respondents, but oral argument thereon was waived by them.

With regard to the argument of respondents that the Hagerstown gateway is congested with other traffic, it is to be noted that the shippers' desire to use the Hagerstown routes was prompted in the main by the embargoes which closed the more direct routes via Richmond and Petersburg. To many of the destinations the distances from Richmond or Petersburg are substantially greater via Hagerstown than via the more direct routes. To other destinations the differences are much less and to many of the important destinations the total distances from points of origin via Hagerstown are not markedly greater than those via Richmond or Petersburg. From points on the Coast Line in the so-called restricted area the limitations of section 15 of the act would preclude our requiring the Coast Line to join in through routes and joint rates via Wadesboro.

We are not impressed with the argument that the absence of divisional arrangements between the carriers is justification for closing any available and useful route.

The report and conclusions of the examiner are approved and adopted as the report and conclusions of the Commission, and an order will be entered in accordance therewith.

No. 8029.

STORM LAKE TANK & SILO COMPANY
v.
LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 2045 AND 2717.

Submitted November 8, 1915. Decided May 9, 1918.

1. Rates on cypress lumber, in carloads, from Sorrento, Plaquemine, and Garyville, La., to Storm Lake, Iowa, found unreasonable. Reparation denied.
2. Fourth section relief denied.

F. W. Knoche for complainant.
A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant manufactures storage tanks and silos at Storm Lake, Iowa. By complaint filed May 19, 1915, it alleges that defendants' rates on cypress lumber, in carloads, from Sorrento, Plaquemine, and Garyville, La., to Storm Lake are unreasonable, unduly prejudicial to complainant to the advantage of its competitors at Omaha, Nebr., Des Moines and Sioux City, Iowa, Sioux Falls, S. Dak., and Minneapolis and St. Paul, Minn., and in violation of the provision of section 4 of the act which prohibits the charging of through rates in excess of the aggregate of intermediate rates. We are asked to award reparation on shipments moving within the statutory period and to prescribe just and reasonable rates. Rates are stated in cents per 100 pounds.

The points of origin are in southeastern Louisiana, and yellow-pine and cypress lumber take the group 5 rates as shown in agent Leland's tariffs. The following table shows the rates at the time of movement from Sorrento, which is representative of the points of origin, to Storm Lake and to other points cited by complainant, together with short-line distances, ton-mile earnings, and car-mile earnings based on 46,000 pounds per car:

From Sorrento to—	Distance.	Rate.	Revenue per ton-mile.	Revenue per car per mile.
	Miles.	*Cents.*	*Mills.*	*Cents.*
Storm Lake	1,168	33	5.65	12.99
Omaha, Nebr	1,007	25	4.97	11.42
Des Moines, Iowa	1,033	25	4.84	11.13
Sioux City, Iowa	1,107	30	5.42	12.47
Sioux Falls, S. Dak	1,198	32	5.34	12.29
Minneapolis, Minn	1,303	32	4.91	11.30

It should be noted that the rates shown from Sorrento apply from all grouped points. In *Lumber Rates from Helena, Ark., and Other Points*, 41 I. C. C., 565, the average distances from all points in group 5 to Omaha and Des Moines are shown to be 838 miles and 848 miles, respectively.

It was testified that class and commodity rates generally from the points of origin here in question and from other points in the same general territory to Storm Lake are the same as the corresponding rates to Sioux City. Complainant shows that the aggregate of the 25-cent rate from points in group 5 to Des Moines plus the Iowa distance rate of 7.1 cents from Des Moines to Storm Lake, on file with the Commission, is 9 mills less than the joint rate of 33 cents from group 5 points to Storm Lake. This alleged departure was protected by Fourth Section Applications No. 2045 of the Illinois Central Railway and No. 2717 of the Texas & Pacific Railway, which were heard with this case. On February 15, 1917, the group 5 rates to Des Moines and Omaha were increased from 25 cents to 26.5 cents, which amount, added to the 7.1-cent Iowa distance rate beyond Des Moines, exceeds the joint rate. By way of certain routes in connection with the Illinois Central, Storm Lake is intermediate to Sioux City and Sioux Falls. The departures from the long-and-short-haul provisions of the fourth section, resulting from the charging of lower rates to the two points last mentioned than to Storm Lake, are protected by fourth section applications, which were not set for hearing. They will not be considered.

The complainant's witness was unable to testify with respect to the competition encountered by complainant. Substantially no evidence of undue prejudice was adduced.

Defendants testified that the 33-cent rate was based on the Cairo, Ill., combination, 14 cents to Cairo and 19 cents beyond, which is the customary basis for rates from and to these territories. They asserted that the Minneapolis rates were upon a less than reasonable basis, so that lumber from the south might compete with lumber from the northern territory, which Minneapolis is nearer to. They cited numerous rates on lumber, some of which had been approved by us, with which, distance considered, the rates assailed do not compare

unfavorably. Generally speaking, the rates cited applied in territories other than that here under consideration, and there was substantially no showing of similarity of transportation conditions.

The group 5 rates to Omaha and Des Moines apply also to South Omaha, Lincoln, Nebr., and Council Bluffs, Iowa, known as the Omaha group. In *Commercial Club of Omaha* v. *A. & S. R. Ry. Co.*, 18 I. C. C., 532, the group 5 rate to the Omaha group was reduced from 26.5 to 25 cents. In *Lumber Rates from Helena, Ark., and Other Points*, 33 I. C. C., 297, the carriers' proposal to increase this rate to 26.5 cents was found not justified, but upon rehearing, 41 I. C. C., 565, the proposed rate of 26.5 cents was approved. The carriers forming the direct lines to the Omaha group stated that they could not justify the charging of higher rates to intermediate points than to the Omaha group, and fourth section relief over those lines was denied.

The 26.5-cent rate exceeds the rate from Kansas City, Mo., by 2.5 cents for an increase in distance of 194 miles in an estimated average aggregate haul of 972 miles. In *Traffic Bureau, Sioux City Commercial Club* v. *A. & S. R. R. R. Co.*, 24 I. C. C., 177, we found that, in view of the 25-cent rate to Omaha on yellow-pine lumber from the territory in question, a rate to Sioux City in excess of 28 cents would be unreasonable. The distance from Omaha to Sioux City is 100 miles. In *Traffic Bureau, Sioux City Commercial Club* v. *A. & W. Ry. Co.*, 47 I. C. C., 347, we found that the rates on lumber and other forest products, except yellow pine, from the same producing territory to Sioux City which exceeded the Omaha rates by more than 2 cents, were unduly prejudicial to Sioux City. The short-line distance from Sorrento to Storm Lake exceeds the distance to Des Moines by 135 miles, or approximately 13 per cent. The 33-cent rate exceeds the Des Moines rate by 6.5 cents, or 24.5 per cent, and yields greater ton-mile earnings than does the Des Moines rate for the shorter haul.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed 30 cents per 100 pounds. No one having first-hand knowledge concerning the shipments or the payment of the freight charges thereon appeared at the hearing. In the absence of proof that complainant was damaged by the charging of the rates herein found unreasonable, no reparation can be awarded. Defendants did not attempt to justify the charging of joint rates to Storm Lake in excess of the aggregates of intermediates and the fourth section applications set for hearing with this case will be denied to the extent that they are involved.

ropriate orders will be entered.

No. 8681.

REPUBLIC CREOSOTING COMPANY
v.
NEW ORLEANS GREAT NORTHERN RAILROAD COMPANY ET AL.

Submitted June 17, 1916. Decided May 9, 1918.

Shipments of lumber from Bogalusa, La., to Indianapolis, Ind., for transit and reshipment to Chicago, Ill., found to have been misrouted by the initial carrier. Reparation denied for lack of proof of damage, and complaint dismissed.

E. J. Giddings for complainant.

Christopher Baldy and *Walter P. Cooke* for New Orleans Great Northern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant alleges that, due to misrouting, unreasonable charges were collected on three carloads of lumber shipped in July, 1913, from Bogalusa, La., to Indianapolis, there made into creosoted paving blocks and reshipped to Chicago, Ill. It prays for reparation. The claim was seasonably filed with the Commission. Rates are stated in cents per 100 pounds.

The shipments were routed by the shipper "via I. C. R. R.," and moved from Bogalusa over the New Orleans Great Northern Railroad to Slidell, La.; New Orleans & Northeastern Railroad to Meridian, Miss.; Mobile & Ohio Railroad to Cairo, Ill.; and Illinois Central Railroad to Indianapolis. Charges were assessed at a joint commodity rate of 24 cents legally applicable over the route of movement.

A rate of 24 cents was contemporaneously applicable over the initial line to Jackson, Miss., and the Illinois Central beyond. Over this route lumber to Indianapolis could be manufactured into creosoted paving blocks and forwarded to Chicago at the through rate of 24 cents from original shipping point to ultimate destination, plus a charge of $1.50 per car for the transit service. Complainant testified that the lumber was manufactured into creosoted paving blocks at Indianapolis and the product shipped to Chicago; and that,

due to the misrouting of the shipments into Indianapolis, it was compelled to pay the local rate of 9 cents from Indianapolis to Chicago. As the route specified by the shipper was complete, it was the duty of the initial line to deliver the shipments to the Illinois Central at Jackson, the point of direct connection. *Kentucky-Indiana Hardwood Co.* v. *S. Ry. Co. in Mississippi*, 43 I. C. C., 154; *Torrey Cedar Co.* v. *C. & N. W. Ry. Co.*, 43 I. C. C., 135. We find that the New Orleans Great Northern Railroad Company misrouted the shipments.

Although the freight bills tendered by complainant to prove that it made outbound shipments to Chicago are dated in July, 1914, within a year of the inbound shipments, as required by the transit tariff, the complainant has failed to furnish definite evidence, after having been given an opportunity since the hearing to do so, that no refund has been secured on those shipments to Chicago by the surrender of other freight bills covering equivalent inbound tonnage. All of its products did not move to Chicago, and a number of its shipments from Bogalusa moved by way of Jackson. The lack of definite evidence upon this essential point precludes a finding as to the amount of damages, if any, sustained. *Gray & Smith* v. *P. Co.*, 34 I. C. C., 25.

An order dismissing the complaint will be entered.

No. 9128.[1]

E. I. DU PONT DE NEMOURS POWDER COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted November 14, 1917. Decided May 15, 1918.

1. Carrier that performs a switching service, the entire charge for which is absorbed by the line-haul carrier, is not a necessary party to a proceeding involving the reasonableness of the rate under which the absorption is made. *Du Pont de Nemours Powder Co.* v. *P. R. R. Co.*, 43 I. C. C., 227, reversed.
2. Rates on coal ashes and cinder in carloads from Coatesville, Pa., to Carney's Point and Gibbstown, N. J., found to have been and to be unreasonable. Maximum reasonable rates prescribed and reparation awarded.

V. S. Thomas and *J. P. Laffey* for complainant.

George R. Allen and *Henry Wolf Biklé* for Pennsylvania Railroad Company.

William L. Kinter for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

No. 9128, which was originally decided February 20, 1917, 43 I. C. C., 227, was reopened, on July 10, 1917, upon our own motion, for reargument. The subject matter of the complaint in No. 9567 is identical with, and in No. 9567 (Sub-No. 1) similar to, that in No. 9128. Rates are stated in cents per 100 pounds unless otherwise specified.

The complainant, a corporation, manufactures explosives at Wilmington, Del. The complaint in No. 9128, filed August 23, 1916, alleged that the rate of 13.7 cents charged by defendant on 107 carloads of coal ashes and cinder shipped from Coatesville, Pa., to Carney's Point, N. J., between March 31 and June 21, 1915, inclusive, was unreasonable. It prayed for reparation and the establishment of a reasonable rate. Coatesville and Carney's Point are served by the Philadelphia & Reading Railway and the Pennsylvania Railroad. The shipments originated at Worth Brothers' plant, Coatesville, which plant is local to the Philadelphia & Reading. The initial carrier switched the shipments to its interchange tracks

[1] This report also embraces No. 9567 and No 9567 (Sub-No. 1), Same *v.* Philadelphia & Reading Railway Company et al.

with the Pennsylvania at Coatesville and charged therefor 20 cents per net ton, which charge was absorbed by the Pennsylvania. The Philadelphia & Reading was not made a party defendant, nor was the switching charge assailed. We found that the Philadelphia & Reading was a necessary party defendant and dismissed the complaint.

Ashes and cinder are rated sixth class in the official classification, which governs. The 13.7-cent rate was defendant's local sixth-class rate from Coatesville to Carney's Point. This rate has since been increased to 16 cents following *The Fifteen Per Cent Case*, 45 I. C. C., 303. Defendant's tariffs contain a provision that on shipments which weigh 5,000 pounds or more it will absorb the charges of the Philadelphia & Reading for switching from or to Worth Brothers' plant to or from the interchange point between these carriers at Coatesville. Under its tariffs defendant held itself out to transport traffic of this kind from Worth Brothers' plant to Carney's Point at a rate of 13.7 cents, and it must therefore assume the responsibility for its reasonableness. Even had the Philadelphia & Reading been made a party defendant we could not establish a joint rate over the route of movement because it would short haul that carrier, which has the short line from and to these points. We are of opinion that the naming of the Pennsylvania only as defendant was sufficient to bring in issue the reasonableness of the rate assailed.

We have repeatedly held that we have no authority, in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. No question has been raised as to the reasonableness of the Philadelphia & Reading's switching charge and it must be presumed that such charge is reasonable. In determining the reasonableness of the charges collected we must therefore determine what, aside from the switching charge which defendant absorbed, would be a reasonable rate for the haul over its line.

The distance from Coatesville to Carney's Point over the defendant's line is 98 miles, 30 of which is constructive mileage for the bridge haul over the Delaware River between Philadelphia, Pa., and Camden, N. J. The Philadelphia & Reading serves Carney's Point by car float or lighterage through Wilmington. The distance from Coatesville to Carney's Point over the latter line is 63 miles, 30 of which is constructive mileage for the haul from Wilmington to Carney's Point, an actual distance of about 5 miles. During the period in which most of the shipments moved and at the present time the rate over the Philadelphia & Reading was and is 80 cents per net ton. The complainant contends that the rate assailed was and is unreasonable to the extent that it exceeded or may exceed 80 cents per ton.

In comparison complainant cites rates on fluxing limestone, sand, slag, and crushed stone ranging from 74 to 95 cents per net ton between points in Pennsylvania and points in Delaware and New Jersey on defendant's line for hauls of from 78 to 105 miles. The rates cited yield earnings ranging from 7.5 to 12.2 mills per net ton-mile. Complainant observes that ashes and cinder have little commercial value, while the articles with which comparison is made have substantial commercial value.

Defendant contends that it establishes commodity rates only in instances where there is a general or constant movement, and that the shipments in controversy represent an occasional or sporadic movement. A willingness is expressed, however, to consider the establishment of a rate of $1.24 per ton from Coatesville, plus the switching charge of the Philadelphia & Reading, upon a showing that there will be a movement. It is shown that the defendant's class rates from Coatesville to Carney's Point exceed the Philadelphia & Reading's class rates between the same points; and that it is not the defendant's practice to meet the rates of the Philadelphia & Reading on any traffic from and to these points.

Defendant shows that the rates on ashes and cinder, slag, crushed stone, and ground limestone from points in Pennsylvania to points in New Jersey range from 79 cents to $1.42 per net ton for distances of from 49 to 99 miles.

In *Du Pont de Nemours Powder Co.* v. *P. & R. Ry. Co.*, 43 I. C. C., 1, we found the following rates per net ton on coal ashes, cinder, and foundry dirt, in carloads, to Carney's Point to be reasonable: $1 from Birdsboro and Reading, Pa., 94 miles and 104 miles, respectively; 80 cents from Coatesville, 63 miles; 70 cents from Rockford, Del., 39 miles; and 60 cents from Wilmington, 30 miles.

We find that the charges assailed in No. 9128 were unreasonable to the extent that they exceeded those that would have accrued at a rate of $1 per net ton for the haul over defendant's line, from Coatesville to Carney's Point, plus 20 cents per net ton, the published switching charge of the Philadelphia & Reading Railway at Coatesville; and that any rate in excess of $1 per net ton for the transportation of this traffic over defendant's line, from and to these points, is, and for the future will be, unreasonable.

The complaint in No. 9567 (Sub-No. 1) covers nine shipments of ashes which moved from Coatesville to Gibbstown, N. J. These shipments were likewise switched by the Philadelphia & Reading from Worth Brothers' plant to the Pennsylvania at Coatesville and then moved over the latter line to destination. Charges were collected at the sixth-class rate of 12.6 cents, the Pennsylvania absorbing the switching charges of the Philadelphia & Reading. Gibbs-

town is intermediate Coatesville to Carney's Point, 14 miles from the latter point.

We find that the charges assailed in No. 9567 (Sub-No. 1) were unreasonable to the extent that they exceeded those that would have accrued at a rate of 95 cents per net ton for the haul over the Pennsylvania Railroad from Coatesville to Gibbstown, plus 20 cents per net ton, the published switching charge of the Philadelphia & Reading Railway at Coatesville; and that any rate in excess of 95 cents per net ton for the transportation of this traffic over the line of the Pennsylvania Railroad Company from and to these points is, and for the future will be, unreasonable.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon these records, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, amount of charges and date collected, rates found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to the Pennsylvania Railroad Company for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. In view of our conclusions in No. 9128 the complaint in No. 9567 will be dismissed.

Appropriate orders will be entered.

No. 9135.

NEW ERA MILLING COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted November 29, 1916. Decided May 9, 1918.

Transit provisions of St. Louis & San Francisco Railroad's tariffs applicable to grain, in carloads, from points in Oklahoma, milled at Arkansas City, Kans., and reshipped beyond, cited and construed. Refund of overcharges directed and complaint dismissed.

E. F. Erbacher for complainant.
R. R. Lethem for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant herein alleges that by reason of the improper application of certain provisions of the transit tariff of the St. Louis & San Francisco Railroad, hereinafter called the defendant, illegal charges have been assessed on carload shipments of grain from points in Oklahoma, milled in transit at Arkansas City, Kans., and the products thereof forwarded beyond.

Prior to January 28, 1915, the material provisions of the transit tariff in question read as follows:

SECTION 3.—*Rates to be applied.*

Item 80 (*a*). Through rate from point of origin, to destination, in effect at date of shipment from point of origin, applies when the transit point is in direct line as defined in sections No. 9 and 15. In applying mileage rate use that for distance via the route traversed by shipment, except where short-line rate is authorized in tariff covering the shipment. * * *

(*b*) The highest rate in the movement, that is, origin to transit point, or origin to destination, or transit point to destination, in effect date of shipment from point of origin will apply when transit point is not in a direct line as defined in section 9.

SECTION 9.—*Defining direct or out of line hauls and charges therefor.*

Item 80 (*a*). When transit station is intermediate between point of origin and final destination no extra charge will be made for the transit privilege,

but when transit point is not intermediate extra charges, as shown in item 85 will be assessed for out of line service, except as provided for in this section and section 15, items 155 to 760, inclusive.

Item 85. In all cases where indirect or back-haul service is performed, the through rate from point of origin of the grain or seed to the final destination of the grain or seed or product will be protected, subject to the following additional charges for the service out of the direct line, except as noted:

(*a*) Where mileage in excess of that applying via direct line does not exceed 50 miles, 2 cents per 100 pounds. * * * No milling in transit, cleaning, shelling, or reconsigning will be allowed where total service out of the direct line exceeds 120 miles.

By a further provision of the latter section back hauls performed for the convenience of defendant or its connections are expressly excepted from the application of the extra charges. Effective January 28, 1915, the first paragraph of item 85 was changed to read as follows:

In all cases where indirect or back-haul service is performed, the following additional charges will be assessed for service out of the direct line, except as noted:

By item 165, section 15, covered by the references in section 3, item 30 (*a*), and section 9, item 80 (*a*), it is provided that where Arkansas City is the transit point on grain or seed from certain grouped points of origin to certain grouped points of destination therein named, the basis will be: "No extra charge for back or indirect haul."

Arkansas City is located on defendant's line between Steen, Okla., and Beaumont Junction, Kans. The following shipments are illustrative, all routes mentioned being by way of defendant's lines:

1. Originating at Drummond, Okla., milled into flour at Arkansas City, and reshipped to Memphis, Tenn. The points of origin and destination are covered by section 15, item 165. The movement of the grain is northerly through Steen to Arkansas City. The movement of the flour is north from Arkansas City to Beaumont Junction and thence east. The total distance by this route is 41 miles greater than had the shipments moved east through Steen and Tulsa, Okla., to Springfield, Mo., and beyond to Memphis.

2. Originating at Dacoma, Okla., milled into flour at Arkansas City, and reshipped to Boynton, Okla., the points of origin and destination being covered by section 15, item 165. In this instance, there is a back haul from Arkansas City to Steen, or a total out of line movement of 138 miles from the direct route between Dacoma and Boynton.

3. Originating at Dacoma and milled at Arkansas City, with same out of line movement as in the first case, but destined to Springfield, a point not covered by section 15, item 165.

Complainant contends that as to shipments illustrated by the first two cases it is entitled to the "through rate from point of origin to destination" as against the "highest rate in the movement," while in the third case, on shipments prior to January 28, 1915, at least, it was entitled to the lower rate, whether the highest rate in the movement as provided by item 30 (*b*), or the rate from point of origin to destination, plus the additional charge for out of line movement, as prescribed in item 85. It is argued as to the first two cases that item 30 (*a*) provided and provides for the application of the through rate from point of origin to destination when the transit point is in a direct line as defined in sections 9 and 15; that, whereas section 9 contained and contains nothing in the nature of a definition of direct or indirect lines, the waiver in section 15 of extra charges for back or indirect hauls in effect put Arkansas City in a direct line; and that prior to the amendment item 85 also expressly provided for the protection of the through rate in all cases where indirect or back-haul service was performed, subject to additional charges for the out of line service, which were waived as to such shipments. In the third case, complainant contends that, inasmuch as the first paragraph of item 85, prior to the amendment, protected the through rate from origin to destination on indirect shipments, subject to the additional charges, while item 30 (*b*) authorized the highest rate in the movement, the two provisions were in conflict, which entitled a shipper to the lower of the prescribed bases. Complainant further contends that the subsequent changes in the first paragraph of item 85 were ineffective in eliminating this conflict, because there was no proper tariff notation of an increase.

Defendant's contention, as to shipments similar to the first two cases, is, in substance, that items 80 (*a*) and 85 of section 9, which provide for additional charges for out of line service, are eliminated from consideration by virtue of the waiver of such charges under item 165 of section 15, thereby in effect placing Arkansas City on a direct line as far as out of line charges are concerned, but not otherwise; and that reference must therefore be had to the provisions of section 3 to determine the applicable basis of rates, item 30 (*b*) whereof prescribes in such cases the highest rate in the movement. With respect to the third case defendant contends that the highest rate in the movement is applicable, as provided in item 30 (*b*), plus the appropriate out of line charge prescribed in item 85 (*a*).

Item 165 of section 15 authorizes the exercise of transit rights at Arkansas City, on grain from the designated points of origin to the designated destinations, independently of those governed by the provisions of section 9. But for that specific item, the first case cited, with an out of line movement of but 41 miles, would fall within the

purview of section 9 and be subject to the charges prescribed in item 85 (*a*), whereas the second case obviously would not be entitled to transit. In either case the specific grant by item 165 would take precedence, unaffected by the limitations of the earlier section. In other words, there was in those cases no conflict of provisions at any time, and inasmuch as item 165 provided for immunity from extra charge for the back or indirect haul, without prescribing a rate basis, the general provisions of section 3 required the application of the highest rate in the movement.

These considerations do not apply to the third case, and prior to the amendment of item 85 it was in conflict with item 30 (*b*) of section 3.

The fact that there was no notation or symbol of an increase in the supplement in which item 85 was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignments bore symbols denoting both increase and reduction, did not affect the validity or applicability of the item, as it was allowed to become effective in each instance.

We find that under the foregoing provisions, when the points of origin and final destination were and are included in item 165 of section 15, the highest rate in the movement was and is the legal rate applicable on grain milled at Arkansas City and on the product beyond; that prior to January 28, 1915, on shipments from or to points not included in that section and item, where the out of line movement is not in excess of 120 miles, the through rate from point of origin to final destination, plus the out of line extra charge, or the highest rate in the movement, whichever made lower, was legally applicable; and that on and after that date the highest rate in the movement, plus the out of line extra charge, was and is legally applicable on such shipments. Except as to the validity of the amendments of item 85, above considered, the present tariff provisions are not assailed, and no order for the future is necessary. Defendant should promptly refund any outstanding overcharges, with interest, to the parties properly entitled thereto.

An order dismissing the complaint will be entered.

No. 9193.

SWIFT & COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Submitted January 17, 1917. Decided May 9, 1918.

Charges on packing-house products, fresh meats, and other commodities, in peddler cars, from Chicago, Ill., to points in Illinois and Indiana found to have been unreasonable. Reparation awarded.

R. D. Rynder for complainant.
Walter Nichols for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the meat-packing business at Chicago, Ill. By complaint, filed September 11, 1916, it alleges that defendant's charges on certain shipments of fresh meats, packing-house products, and other commodities, in peddler cars, from Chicago to points in Indiana on defendant's line, between June 15, 1914, and February 10, 1915, inclusive, were unreasonable. Reparation is asked. The claim was presented to the Commission informally April 15, 1916.

The consignments in each car were in less-than-carload lots destined to various points on defendant's line in Illinois and Indiana, each car containing consignments to points in Indiana. The shipments included fresh meats, various packing-house products, and a few other articles, such as glass display jars, soap, eggs, and evaporated milk, all permitted, under defendant's tariffs, to be shipped in peddler cars. There are various overcharges and undercharges, the former aggregating $8 and the latter $2.83.

Prior to June 15, 1914, defendant's tariff provided for the application on shipments in peddler cars of the less-than-carload rates to each destination, subject to a minimum weight of 10,000 pounds for each car, any weight added to make up the minimum to be charged for at the less-than-carload dressed beef rate from point of origin to the farthermost destination. On the date mentioned the minimum weight was increased to 20,000 pounds, the difference between the weight shipped and the increased minimum to be charged for at the

dressed beef carload rate to the farthermost destination of any shipment in the car. This basis was in effect at the time the shipments in question moved. Defendant intended to establish, in line with the recognized basis in central freight association territory, a minimum revenue for each peddler car equivalent to the charges on 20,000 pounds at the carload dressed beef rate from point of origin to the farthermost destination, and on February 10, 1915, the tariff was corrected to provide therefor. Complainant asks for reparation in the amount of the difference between the charges paid and those that would have accrued at such minimum charge per car. Defendant expressed a willingness to make reparation.

It was testified that as a practical matter it is impossible to load peddler cars to 20,000 pounds and that 15,000 pounds is a heavy loading. In *Peddler Car Minimum*, 43 I. C. C., 139, we found that on commodities transported in peddler cars in central freight association territory the respondents had not justified a proposed increase in the minimum charge based on 20,000 pounds to the basis of 21,000 pounds at the dressed beef carload rate to the farthermost destination.

We find that the charges collected were unreasonable to the extent that they exceeded those that would have accrued on basis of the subsequently established minimum charge per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges collected and those that would have accrued on basis of the mininum charge per car herein found reasonable; and that it is entitled to reparation, including the overcharges described, in the sum of $206.09, with interest. Collection of the undercharges mentioned may be waived.

An order awarding reparation will be entered, but no order for the future is necessary.

No. 9281.

RICHMOND OIL COMPANY, INCORPORATED,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 703, 1561, 1563, 1573, 1625, 1780, 1781, 1911, AND 4966.

Submitted May 4, 1917. Decided May 15, 1918.

1. Rates on petroleum and its products, in tank-car loads, from Baltimore, Md., to Richmond and Petersburg, Va., found justified. Complaint dismissed.
2. Fourth section relief denied.

C. D. Chamberlin for complainant.

H. B. Cole for intervener.

W. A. Parker and *F. R. Cross* for Baltimore & Ohio Railroad Company; *F. D. McKenney* and *W. Clayton Carpenter* for Baltimore Steam Packet Company, Chesapeake Steamship Company, Pennsylvania Railroad Company, and Philadelphia, Baltimore & Washington Railroad Company; and *Harry L. Daw* for Norfolk & Western Railway Company.

Report of the Commission.

By the Commission:

The complaint herein attacks defendants' rates on petroleum and its products from Baltimore, Md., to Richmond and Petersburg, Va., as unreasonable and unduly prejudicial, and prays for reparation on shipments moving on and after August 1, 1916, and the establishment of reasonable and nonprejudicial rates. The Prudential Oil Corporation of New York, N. Y., intervened and asked for reparation. For convenience rates on petroleum and its products will hereinafter be referred to as oil rates and stated in cents per 100 pounds.

Complainant's shipments from Baltimore to Richmond and Petersburg aggregate about 150 per year. They move in tank cars over the Baltimore & Ohio Railroad to Potomac Yard, Va.; Washington Southern Railway and Richmond, Fredericksburg & Potomac Railroad to Richmond; and Seaboard Air Line Railway thence to Petersburg, 156 miles to Richmond and 179 miles to Petersburg. The tank cars, together with the loading and unloading facilities, are furnished by the shippers. The mileage allowance to the owners of the

cars of three-fourths of a cent is said to be substantially less than the cost of furnishing the car.

On February 23, 1915, following *The Five Per Cent Case*, 32 I. C. C., 325, the rates on oil from Baltimore to Richmond and Petersburg were increased from 10 to 10.6 cents. On August 1, 1916, they were further increased to 13 and 14 cents, respectively, which rates were permitted to become effective over shippers' protest. These rates yielded earnings per ton-mile of 1.67 cents to Richmond and 1.56 cents to Petersburg, and per car-mile, based on an average tank-car load of 50,000 pounds, of 41.7 cents to Richmond and 39.1 cents to Petersburg. For complainant and intervener there were cited rates on oil to Richmond and Petersburg of 7½ cents from Norfolk, 89 and 82 miles, respectively; 11 cents for the one-line haul from Wilmington, N. C., 244 miles and 221 miles, respectively; 15 to 25.9 cents from various points in New York, Pennsylvania, West Virginia, Ohio, and Indiana, 252 to 902 miles; and from Baltimore of 13 cents to Norfolk, 245 miles, and 17.6 cents to various destinations in Virginia, 255 to 270 miles. Complainant also referred to various articles, including pickles, vinegar, sauerkraut, cottonseed oil, sugar, and other commodities, most of which are not analogous to petroleum and do not compete with it, the rates on which from eastern seaboard points to Virginia points were not increased on August 1, 1916.

Complainant testified that in marketing oil at Richmond and Petersburg it encountered intense competition with the large oil companies who bring their product into this territory in their own barges at a minimum cost. As the rates assailed represent increases since January 1, 1910, the burden of justifying them rests upon the defendants.

In *Chamber of Com. Washington, D. C.*, v. *B. & O. R. R. Co.*, 30 I. C. C., 446, we found that the class rates from eastern points to Washington were not shown to be unreasonable, and denied the defendant permission to maintain lower class rates from those points to Richmond than to Washington. In *Chamber of Com., Washington, D. C.* v. *P. R. R. Co.*, 38 I. C. C., 593, we said that commodity rates should be established from eastern points to Washington in line with those to Richmond, Petersburg, and Fredericksburg, Va., on a reasonable basis lower than the class rates, and the carriers were afforded an opportunity to readjust their rates to all the points referred to. Defendants state that the rates here in issue resulted from a general readjustment occasioned in part by these decisions. On August 1, 1916, rates of 15 cents on petroleum from New York and Philadelphia to Richmond and Petersburg were established; also sixth-class rates of 13, 15, and 17 cents, re-

spectively, from Baltimore to Richmond, Baltimore to Petersburg, and from New York and Philadelphia, on the one hand, to Richmond and Petersburg, on the other. Prior to August 1, 1916, those rates had been 13.1, 10.6, 11.6, and 14.6 cents, respectively. Corresponding increases were made in the other class rates

Defendants' witness testified that other commodity rates from eastern points to Richmond and Petersburg were also increased, while certain rates to Washington were reduced; and that rates from eastern points to Richmond and Petersburg are influenced by rates from New York to Norfolk that are made in competition with boat lines operating between those points. Defendants contend that, irrespective of the general readjustment, the increase was justified, because the former rates were depressed by water competition which has been rendered less intense by increases in the water rates, and were unremunerative. They point out that many of the rates cited by complainant either apply under dissimilar transportation conditions or are affected by water competition, and that those cited from points in central freight association territory to Richmond and Petersburg are predicated on the Chicago-New York rates, which is a low basis. Defendants cited by way of comparison class rates from Philadelphia and Pittsburgh, Pa., Baltimore and Trenton, N. J., to points in central freight association territory with which the class rates above mentioned do not compare unfavorably. They stated that in official and southern classification territories oil, in carloads, is rated fifth class, but that the usual basis is 90 per cent of fifth class in official classification territory and sixth class in the southern. Prior to *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rates from Baltimore to Richmond and Petersburg were equal to sixth class and 1 cent less than sixth class, respectively.

Defendants also cited rates on oil ranging from 13.1 to 14.3 cents from Baltimore to points in Pennsylvania, Maryland, and Virginia, 151 to 206 miles, and from 9.5 to 15 cents from and to various points in Pennsylvania, Maryland, New Jersey, New York, and Virginia, 53 to 363 miles. The 15-cent rates cited apply from eastern seaboard points, such as Bayonne, N. J., and Philadelphia and Marcus Hook, Pa., to Richmond and Petersburg, 234 to 363 miles. The greatest distance in connection with which any of the other rates cited applies is 162 miles from Pittsburgh to Bellefonte, Pa., the rate being 14.3 cents.

We find that the defendants have justified the increased rates assailed.

Portions of various fourth section applications filed on behalf of the defendants wherein authority is sought to continue rates on petroleum and its products, in carloads, from Baltimore to Richmond

and Petersburg lower than the rates contemporaneously applicable to the same commodities from and to intermediate points were heard with this case. The only justification offered was in respect to rates over the following routes: By way of the Baltimore & Ohio, Potomac Yard, and the Chesapeake & Ohio Railway from Baltimore to Richmond, and by way of the Baltimore Steam Packet Company or the Chesapeake Steamship Company, Norfolk, and Norfolk & Western Railroad from Baltimore to Petersburg. Petitioners' application for relief by the first-mentioned route is based upon the ground that the rate to Richmond is made to meet the competition of the more direct routes through Potomac Yard in connection with the Richmond, Fredericksburg & Potomac. The distance via the shorter of the latter routes is 156 miles; via the Chesapeake & Ohio, 210 miles, or about 35 per cent greater. The highest rate to any intermediate point on the latter route is 13.1 cents, which is only 0.1 cent in excess of the rate found justified to Richmond. The 13-cent rate, while not as profitable to the Chesapeake & Ohio as to the shorter routes, is apparently not unduly depressed, and, on the whole, we think it should be observed as the maximum rate on the Chesapeake & Ohio if that company desires to meet the short-line competition. On the routes via water lines to Norfolk and thence Norfolk & Western to Petersburg the distance is 182 miles, only slightly in excess of the distance via the short all-rail route through Potomac Yard. The relief prayed by these routes to charge a lower rate to Petersburg than to intermediate points is based upon the ground that the rate to Petersburg is made to meet the competition of all-water lines from Baltimore to Petersburg. The evidence in this case does not support the petitioner's contention as to the existence of this competition and its effect upon the rate. In fact, there does not appear to be any competition between Baltimore and Petersburg by water, and, therefore, apparently no reason why these routes should not conform to the fourth section in the same manner as the more direct all-rail routes through Potomac Yard. We are of opinion, therefore, that the relief prayed over these routes, and also all other and further relief which was sought by petitioners covering rates on petroleum and its products from Baltimore to Richmond and Petersburg should be denied.

Orders dismissing the complaint and denying fourth section relief will be entered.

No. 9285.

A. P. YOUNGBLOOD, INCORPORATED,

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Submitted March 12, 1917. Decided May 9, 1918.

Certain storage charges on a carload of flour at Jersey City, N. J., found to have been illegal and demurrage charges not lawfully due. Reparation awarded.

Neil P. Cullom and *Arthur W. Rinke* for complainant.
Charles E. Miller for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged, among other things, in the purchase and sale of flour at New York, N. Y. By complaint filed October 27, 1916, it alleges that charges of $19.60 collected by defendant for the storage at Jersey City, N. J., of a carload of flour shipped January 25, 1916, from Cincinnati, Ohio, were unlawful to the extent that they exceeded $4.90. Reparation is asked.

The shipment, weighing 49,000 pounds, was consigned to New York, lighterage free, to the order of the consignor, notify complainant, with the privilege of inspection. It arrived at Jersey City on February 5, 1916, and on the same day an arrival notice was sent to complainant. The defendant, on February 12, 1916, received from complainant a request to place the car at pier No. 5, and on the same date directed its agent to deliver the car as requested. On February 26, 1916, the defendant delivered the car at pier No. 5, unloaded the flour, and stored it in its freight house on the dock, where it remained until March 8, 1916, when the bill of lading was surrendered by complainant and the flour reshipped to Newark, N. J. Defendant admitted the receipt in July, 1915, of a written request from complainant to deliver all of its flour on pier No. 5, but states that complainant usually follows up each car with specific instructions for delivery.

The charges collected were assessed as storage charges for 2 five-day periods at the rate of ½ cent per 100 pounds for each period and

three periods at 1 cent per 100 pounds. At the hearing defendant admitted that storage charges were legally applicable only after the flour was unloaded and now contends that the legal charges were storage charges for 2 five-day periods or fraction thereof at ½ cent per 100 pounds, or $4.90, and demurrage charges for 11 days at $1 per day for the time that the flour remained in the car before unloading, less free time allowance. Complainant is not contesting the $4.90 charge, and the only question is whether demurrage charges were legally applicable.

Defendant's tariff I. C. C. No. S-8615 of rules governing storage and handling of freight and free time allowances for holding freight at New York harbor points provided, in part, as follows:

RULE 3. Freight in carloads consigned direct for station delivery in New York City, which is, at request of consignee, held at Jersey City (Communipaw), N. J., for orders, will be held at Jersey City (Communipaw), N. J., for not exceeding 5 days free of charge, except when for transshipment by vessel to points on or beyond Long Island Sound or Sandy Hook, in which event freight will be held at Jersey City (Communipaw), N. J., for not exceeding 10 days free of charge. After the expiration of the free time specified such freight will be subject to storage charges prescribed in rule 5.

Storage and demurrage at Jersey City (Communipaw), N. J., after expiration of free period.

RULE 5. If the freight referred to in rule 3 is not removed at the expiration of the prescribed free time, it will (at the option of this company, when consisting of freight that can be readily handled through warehouses by hand labor) be stored at the risk and expense of owner at public warehouses within the lighterage limits of the port or stored in our freight houses at Jersey City (Communipaw), N. J.

When held in our freight houses at Jersey City (Communipaw), N. J., the following rate of storage will be charged: For the first 5 days or fraction thereof beyond the period of free storage (including handling in and out), ½ cent per 100 pounds; for each succeeding 5 days or fraction thereof, ½ cent per 100 pounds.

If the freight can not be handled through warehouses by hand labor, and therefore necessary to hold in cars, it will be subject to car demurrage rules and charges.

I. C. C. S-8677 of car demurrage rules applicable at stations on defendant's line provided, in part, as follows:

RULE 1. Cars subject to rules.

Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these demurrage rules.

RULE 2. Free time allowed.

SEC. C. Cars containing freight for transshipment to vessel or lighter will be allowed such free time at the ports as provided for in C. R. R. Co. of N. J. tariff I. C. C. S-8615.

RULE 5. Placing cars for unloading.

SEC. A. When delivery of cars consigned or ordered to any other than public delivery tracks or to industrial interchange tracks can not be made on account of the act or neglect of the consignee, or the inability of the consignee to re-

ceive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must send or give the consignee written notice of all cars he has been unable to deliver because of the condition of the private track or interchange tracks, or because of other conditions attributable to consignee. This will be considered constructive placement.

The defendant takes the position that the shipment was held for complainant's convenience and that demurrage charges were legally applicable under rule 1 of the demurrage tariff for the period claimed. The complainant contends that demurrage charges did not lawfully accrue for the following reasons:

(1) The storage tariff expressly excludes the demurrage tariff, for it provides on its face that it names the rules governing "storage and handling of freight and free time allowance for holding freight" at Jersey City; that flour is freight that can be handled through warehouses by hand labor; that rule 5 makes it optional with the carrier after the free time period to store such freight, in its warehouses or in a public warehouse, at the storage charges named, and expressly provides that if the freight is such that it can not be handled through a warehouse by hand labor and, therefore, must be held in cars, it will be subject to the car demurrage rules and charges; and that rule 2, section C, of the demurrage tariff specifically excludes lighterage free freight from its terms so far as the question of free time is concerned, and makes reference to the storage tariff. Our attention is also called to the fact that the storage tariff makes specific reference to the demurrage tariff for rules and charges on certain classes of freight, including hay and straw.

(2) That no demurrage charges accrued even if the demurrage tariff was applicable because the shipment was held in the car for defendant's own convenience; and that it was not available to complainant until unloaded at pier 5, as it could not be inspected in the car.

The defendant on February 12, 1916, received specific instructions to deliver this car to pier 5, but delivery was not effected and the car unloaded until February 26, 1916. It is explained that pier 5 can accommodate approximately 50 cars; and that during this time it was badly congested and the car in question was unloaded as soon as possible after its arrival in view of the congested situation. Reference is made to the fact that on February 5, 1916, when the car arrived, complainant had 25 cars in storage on pier 5 and 29 cars in defendant's yard for delivery on the pier. During the period from February 5 to February 26 defendant unloaded 36 cars on this pier for complainant. The defendant states that there is no proof of record that pier 5 was insufficient for the demands of normal business, and apparently concludes that complainant had a greater quan-

tity of flour on hand than usual and should be penalized because the carrier was not able immediately to unload the car. The brief for defendant contains the following statement: "The burden is on complainant to prove that it was possible by the exercise of ordinary diligence for the defendant to have unloaded this car before it was actually unloaded." We are of the opinion that such a burden is not imposed on the complainant. Assuming that the demurrage tariff applied, rule 1 would not cover the situation, as the carrier had already received specific instructions covering the delivery of the shipment and it was its duty to carry out such instructions unless delivery could not have been effected because of the act or neglect of the shipper, or the inability of the consignee to receive as provided in section A of rule 5. The rule provides the procedure to effect a constructive placement, but defendant made no attempt to notify complainant as provided in the rule.

The defendant states that the law imposes no obligation upon it to make the delivery requested even if it could have unloaded the car immediately, as complainant did not acquire the right to control its movement until the bill of lading was surrendered. This contention is technical, and overlooks the practice generally prevailing on lighterage-free freight in New York harbor and of the particular practice of unloading shipments of flour at certain piers in New York harbor in order that shippers may be afforded the privilege of inspection. It further loses sight of the fact that the shipment did not pass out of the carrier's control by being ordered to pier 5. The defendant recognized complainant's right to request delivery at pier 5, as it delivered the shipment and unloaded it 10 days before the bill of lading was surrendered.

We do not deem it necessary to decide whether the demurrage tariff was applicable in order to dispose of this case, as we are of the opinion that no demurrage charges would legally have accrued if it had been applicable. We find that the charges collected on the shipment in excess of $4.90 were illegal. We further find that complainant made the shipment as described, paid and bore the charges; and that it is entitled to reparation in the amount of $14.70, with interest.

An appropriate order will be entered.

No. 9444.

COMBS, CASS & EASTERN RAILROAD COMPANY.

Submitted July 28, 1917. Decided May 9, 1918.

1. Combs, Cass & Eastern Railroad Company found to be a common carrier entitled to maintain and divide joint rates with the St. Louis-San Francisco Railway Company.
2. The divisions paid by the St. Louis-San Francisco Railway Company out of joint rates on interstate shipments of lumber and forest products should not exceed the maxima prescribed in *The Tap Line Case*, 31 I. C. C., 490.

B. R. Davidson for Combs, Cass & Eastern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This proceeding was instituted by us on our own motion to determine whether a proposed arrangement for joint rates between the Combs, Cass & Eastern Railroad Company, hereinafter called the Cass & Eastern, and the St. Louis-San Francisco Railway Company, hereinafter called the Frisco, would be lawful. At the hearing it developed that as yet no specific joint rates had been proposed, the matter being held in abeyance pending our action herein.

The Cass & Eastern was incorporated in January, 1915, under the laws of the state of Arkansas, as the Black Mountain & Eastern Railroad Company. The present name was adopted on August 1, 1916, and operation was commenced about January 1, 1917. The road, which is located entirely within the state of Arkansas, extends from a connection with the Frisco at Combs in a general southerly direction to Black Mountain and thence eastward to Cass, a total distance of 16.03 miles. The equipment consists of a locomotive, which on the date of the hearing was only partially paid for, five flat cars, two box cars, a caboose car, and a gasoline motor car.

The authorized capital stock is $250,000, of which $40,000 has been issued and is outstanding. All of the stockholders, and all of the officers with one or two exceptions, are stockholders of the J. H. Phipps Lumber Company, hereinafter called the lumber company. Three of the railroad directors are directors of the lumber company. The investment value of the road on June 30, 1917, as appearing on its books, excluding the value of the rails, was $237,580.08, of which $40,000 was represented by the capital stock

and the balance by indebtedness to the lumber company. Subsequent to the hearing, counsel for the Cass & Eastern advised that prior to the incorporation of that road the Phipps, Williams Lumber Company leased from the receivers of the St. Louis & San Francisco Railroad 14 miles of 80-pound steel rails and 6 miles of 65-pound steel rails, for an annual rental of $100 per mile; that all of the heavier rail and 3 miles of the lighter have been laid; and that since the incorporation and construction of the railroad, and the discharge of the receivers of the St. Louis & San Francisco, the Cass & Eastern has assumed payment of the rental to the Frisco, without entering into a written contract in respect thereto.

The lumber company has a plant at Fayetteville, Ark., where it manufactures wood stock for wagons, buggies, and plows; a mill at Combs, where it manufactures rough dimension stock to be finished at Fayetteville; and a small portable sawmill about 2 miles from Black Mountain. It was testified that the investment in these various plants is about $86,000, or less than one-half of the investment in the railroad, and it was insisted that the lumber company would not have promoted the railroad merely for service as a plant facility. The lumber company owns about 5,000 acres of timberland within hauling distance of the Cass & Eastern, which also serves about 15 independent sawmills and stave mills. The timber in this section is hardwood, mostly white oak.

Between January 1 and June 30, 1917, the Cass & Eastern handled outbound 8,509,919 pounds of forest products for the lumber company and 5,810,028 pounds for independent shippers. In addition there were a few outbound shipments of live stock, poultry, eggs, etc. The inbound traffic, consisting of less-than-carload shipments of merchandise and supplies, aggregated 463,316 pounds during the same period, of which it is estimated about 2 per cent was consigned to lumber mills. The gasoline motor car is used for the transportation of passengers. A scheduled freight train leaves Combs at 6.30 a. m. daily and returns at 6.30 p. m. From the commencement of operation to June 30, 1917, the railway operating revenues were as follows: Freight, $7,198.90; passenger, $287.20; excess baggage, $0.25; demurrage, $1; total, $7,487.35. During the same period the operating expenses were $7,611.30. To the deficit of $123.95 should be added $133.94 for rent of locomotives and $5.25 for miscellaneous tax accruals.

The Cass & Eastern is rated a class E common carrier by the railroad commission of Arkansas. It issues uniform bills of lading and treats all shippers alike both in respect of service and of rates. The local rates applicable on interstate traffic, on file here, are published as distance class and commodity rates, those on lumber and articles taking the same rate being 5 cents per 100 pounds for distances 10

miles and under and 6 cents for greater distances. An annual report for the period ended June 30, 1917, has been filed with us.

We find that the Combs, Cass & Eastern Railroad Company is a common carrier and may lawfully maintain and divide joint rates with the Frisco. Out of joint interstate rates to and from points on the Cass & Eastern, the divisions or allowances to this line on lumber and forest products must not exceed the maxima fixed in our order of July 29, 1914, in *The Tap Line Case*, 31 I. C. C., 490.

No. 9465.

VALLEY & SILETZ RAILROAD COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted July 25, 1917. Decided May 9, 1918.

The movement of certain carloads of relaying steel rails and fastenings from Portland, Oreg., to Crisp, Simpson, and Falls City, Oreg., held intrastate and beyond the jurisdiction of the Commission. Complaint dismissed.

James G. Wilson and *Geo. B. Guthrie* for complainants.

Fred H. Wood, *C. W. Durbrow*, and *Ben C. Dey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are corporations engaged in operating railroads in Polk county, Oreg. By complaint filed January 22, 1917, as amended, they allege that unlawful and unreasonable charges were collected by defendants for the transportation from Portland, Oreg., to Crisp, Simpson, and Falls City, Oreg., of 81 carloads of relaying steel rails and fastenings shipped from Auburn, Wash., between September 11, 1915, and May 12, 1916, inclusive. They ask reparation. Rates are stated in cents per 100 pounds.

Prior to the movement of the shipments complainants entered into contracts with dealers in secondhand railroad equipment at Portland, under the terms of which specified quantities of relaying rails and fastenings, acceptable to complainants' inspectors, were to be delivered to complainants f. o. b. Portland. The Portland dealers

thereupon entered into an arrangement with the Northern Pacific Railway Company by which certain rails and fastenings stored by that carrier at Auburn were to be delivered to them at Portland, and complainants were notified by the dealers that the material could be inspected at Auburn. After an inspection at that point by complainants' representatives, they were forwarded by the Northern Pacific deadhead as company material to Portland, where they were delivered to the dealers, who in turn delivered them to complainants upon the payment of the contract price. Complainants took out bills of lading for transportation from Portland to either Crisp, Simpson, or Falls City, and prepaid the freight charges. The shipments were transported by the Southern Pacific Company from Portland to destinations in the cars originally loaded at Auburn, except in the instance of one shipment which was transferred because of a wreck.

Complainants contend that the shipments were through interstate shipments from Auburn, but the complaint is directed solely to the charges collected for the movement beyond Portland. Defendants contend that the movement beyond Portland was wholly intrastate and without our jurisdiction.

While at the time the shipments left Auburn the Northern Pacific may have known in a general way that the dealers intended to dispose of the rails and fastenings at Portland, it does not appear that it was under any obligation, under its contracts with the dealers, to transport them to any other destination, nor did it have any dealings whatsoever with complainants prior to the delivery of the material to the dealers at Portland. Complainants having subsequently acquired title under the terms of their contracts with the dealers, entered into independent contracts for its further transportation.

We find that the transportation beyond Portland was separate and distinct from the movement to that point and was intrastate; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas*, 204 U. S., 403; *Zelnicker Supply Co.* v. *M., K. & T. Ry. Co.*, 37 I. C. C., 615; and that the question of the rate for that service is beyond our jurisdiction.

An order dismissing the complaint will be entered.

No. 9505.

E. H. WRIGHT & COMPANY, LIMITED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted May 19, 1917. Decided May 9, 1918.

Rates charged on condensed smoke, in glass, in less than carloads, from Kansas City, Mo., to San Francisco, Cal., and certain other points found not justified. Reparation awarded.

Ferd Relgen for complainant.

W. A. Poteet for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of meat preservatives at Kansas City, Mo. By complaint filed December 12, 1916, it alleges that the rate of $3 per 100 pounds charged by defendants on 32 less-than-carload shipments of condensed smoke, in glass, forwarded from Kansas City to certain destinations in Washington, Oregon, and California, between December 2, 1914, and September 13, 1915, was unreasonable to the extent that it exceeded a rate of $2 formerly in effect and subsequently reestablished. Reparation is asked. The claim was presented to the Commission informally within the statutory period. Rates are stated in amounts per 100 pounds.

Condensed smoke is a liquid used for preserving meat and is obtained by subjecting certain kinds of wood to intense heat and condensing the resulting vapor or smoke.

The shipments moved over defendants' lines by various routes to San Francisco, Sacramento, Stockton, and Marysville, Cal., Portland, Oreg., and Seattle, Vancouver, and Everett, Wash., for the purpose of this case hereinafter called Pacific coast terminals, and to Hanford, Chico, Woodland, Bakersfield, Folsom, Modesto, Portersville, Redding, Red Bluff, Tulare, and Yreka, Cal., Eugene, Grants Pass, Medford, Oregon City, and Salem, Oreg., and Chehalis, Wash. Charges were collected in each instance at the first-class rate of $3, legally applicable except to Yreka, to which point the rate applicable was $3.15, composed of $3 to Montague, Cal., and 15

cents beyond. The latter shipment was apparently undercharged 15 cents per 100 pounds.

For several years prior to November 15, 1914, defendants maintained a commodity rate of $2 on a general list of drugs and chemicals, including condensed smoke, in less than carloads, from Kansas City to Pacific coast terminals. On that date this rate was canceled, leaving in effect the first-class rate of $3. On October 18, 1915, the former commodity rate was restored.

Complainant apparently is under the misapprehension that the $2 commodity rate formerly applied, and now applies, from Kansas City to all the destinations. An examination of the tariffs discloses that to destinations other than the Pacific coast terminals the rates formerly in effect were combinations over the Pacific coast terminals or other points taking the same rates and ranged from $2.10 to $3.04. The present rates to such points are likewise combinations over Pacific coast terminals or points taking same rates, except that in reestablishing the $2 commodity rate it was extended to several of the destinations to which it was not formerly applicable. The present rates are as low as or lower than the rates in effect prior to November 15, 1914, and are not in issue. As the rates assailed represent increases since January 1, 1910, the burden of justifying them is upon the defendants.

It was testified on behalf of the defendants that the former commodity rate was water compelled; that its cancellation was due to the belief that there were many unnecessary less-than-carload commodity items carried in the transcontinental tariffs; and that the restoration of the $2 rate resulted solely from the development of intensified water competition after the opening of the Panama Canal. No evidence was offered to show the extent of the water competition.

We find that defendants have not justified the rates assailed, and that the rates applicable on the shipments in question were unreasonable to the extent that they exceeded the rates in effect prior to November 15, 1914. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and charges applicable thereunder, and the

amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. Collection of the undercharges mentioned may be waived down to the basis of rates found reasonable.

As rates the same as or lower than those herein found reasonable have been in effect for more than two years, no order for the future is necessary.

No. 9623.

A. A. SMITH

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted December 15, 1917. Decided May 9, 1918.

Demurrage charges at Fremont, N. C., on four carloads of cotton linters shipped to Norfolk, Va., not shown to have been unreasonable. Complaint dismissed.

Ernie Adamson for complainant.

Frank W. Gwathmey and *D. Lynch Younger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is engaged in the cotton business at Atlanta, Ga., under the name of A. A. Smith Cotton Product Company. By complaint filed April 20, 1917, he alleges that the demurrage charges collected by defendant on four carloads of cotton linters at Fremont, N. C., were unreasonable and asks reparation.

The shipments consisted of uncompressed cotton linters, loaded 50 bales to the car, intended for East Lyme, Conn., a local station on the New York, New Haven & Hartford Railroad, hereinafter called the New Haven. At the time complainant ordered the cars the New Haven had an embargo on cotton linters to East Lyme and numerous other New England points, except when loaded 65 bales to the car. Defendant furnished the equipment upon complainant's assurance that a special permit would be obtained from the New Haven allowing the shipments to be forwarded. Complainant loaded the cars

and tendered them to defendant on January 30 and 31 and February 1, 1917, but as no permit had been secured and as the embargo was still in effect, defendant refused to issue bills of lading for transportation to East Lyme. On February 8, 1917, complainant instructed that the shipments be forwarded to Norfolk, Va., and they so moved. During the interim $64 demurrage accrued.

Complainant admits that the demurrage charges were assessed in accordance with defendant's tariffs, and submitted no evidence to show that they were intrinsically unreasonable. The propriety of the embargo is not attacked, complainant's contentions being that the demurrage charges did not accrue as a result of any fault on his part, and that it was defendant's duty to accept the shipments, have the linters compressed, and reloaded, 65 bales or more to the car, so as to bring them within the exception to the embargo.

Defendant observes that complainant did not instruct it to have the linters compressed, and no tariff provision was cited which imposes on defendant the duty of compressing linters in the absence of a specific request.

We find that the charges assailed are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9559.

LUCAS E. MOORE STAVE COMPANY

v.

SEABOARD AIR LINE RAILWAY COMPANY ET AL.

Submitted August 17, 1917. Decided May 9, 1918.

Rate on staves, in carloads, from Savannah, Ga., to New York, N. Y., not shown to be unjustly discriminatory or unduly prejudicial. Complaint dismissed.

John R. Walker and *Claude W. Owen* for complainant.

Frederic L. Ballard for Pennsylvania Railroad Company; New York, Philadelphia & Norfolk Railroad Company; and Philadelphia, Baltimore & Washington Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of cooperage stock at New Orleans, La. By complaint filed March 1, 1917, it alleges that defendants' rate of 29 cents per 100 pounds on oak staves 34 inches or over in length, in carloads, from Savannah, Ga., to New York, N. Y., is unjustly discriminatory and unduly prejudicial to the extent that it exceeds a rate of 25 cents maintained by defendants on lumber, laths, shingles, timber, crossties, and box shooks, of the same kind of wood, in carloads, from and to the same points. These rates apply on either export or domestic traffic. The establishment of a rate on staves not in excess of the rate on the other commodities named is asked. Rates are stated in cents per 100 pounds.

The oak staves manufactured by complainant are of various lengths, the maximum being 62 inches and the predominating size 50 inches. They are used for barrels designed to hold liquids, such as wine, olive oil, alcohol, etc., and large quantities are exported. Shipments from Savannah to New York over defendants' lines would move by way of the Seaboard Air Line Railway to Portsmouth or Pinners Point, Va.; by car float, operated by the New York, Philadelphia & Norfolk Railroad, to Cape Charles, Va.; and over the New York, Philadelphia & Norfolk, the Philadelphia, Baltimore & Washington, and the Pennsylvania railroads to destination.

Prior to February, 1916, complainant shipped to New York altogether by water. Thereafter it shipped by rail because of inability

to secure sufficient ship space. It was testified that the ocean rate on staves was 12 cents until 1915 or 1916, when it was increased to 19 cents. On staves from Savannah to New York defendants maintain a joint rate of 29 cents, while on lumber, laths, shingles, timber, crossties, and box shooks a joint rate of 25 cents applies. The 25-cent rate is constructed by adding to the Seaboard Air Line's unpublished basing rate of 13 cents to the Virginia gateway the northern lines' unpublished specific of 12 cents beyond. It was testified that the use of the 13-cent basing rate is authorized in constructing joint rates on numerous commodities ordinarily taking lumber rates, including staves and the articles taking the 25-cent rate, when destined to either water competitive or interior points, but that the 12-cent specific may be used only in constructing joint rates to water competitive points and only on the articles to which the 25-cent rate applies. In constructing the 29-cent rate, which applies to all articles included in the lumber list except those taking the 25-cent rate, a specific of 16 cents is used north of the Virginia gateway. The Savannah-New York rates on staves and lumber are less than the aggregate of the intermediate local rates and are blanketed over a considerable territory in the southeast.

It is conceded that there is no competition between staves and the forest products upon which the 25-cent rate applies, complainant's contention being that the rate attacked is unduly prejudicial because it places complainant at a disadvantage in competing for the purchase of stumpage in the vicinity of Savannah. None of the witnesses was able to testify definitely whether there is an appreciable movement of lumber or other forest products from Savannah to New York, and the record does not establish that the difference between the rates to New York on staves, on the one hand, and lumber and articles taking the 25-cent rate, on the other, has any appreciable influence on complainant's ability to compete in the purchase of stumpage with manufacturers of articles taking the 25-cent rate. Staves, on the one hand, and lumber, laths, shingles, timber, crossties, and box shooks, on the other, do not constitute such "like traffic" that a different charge for their contemporaneous transportation is violative of section 2 of the act. *Board of Trade of City of Chicago* v. *C. & A. R. R. Co.*, 27 I. C. C., 530, 534.

The assistant freight traffic manager of the Pennsylvania testified that his line proposes to increase the water competitive rates from the south to the so-called normal basis.

We find that the rate assailed is not shown to be unjustly discriminatory or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 9636.

GRAHAM COUNTY LUMBER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 10, 1918. Decided May 9, 1918.

Carload of lumber from Andrews, N. C., to New York, N. Y., found to have been misrouted. Reparation awarded.

Duff Merrick and *G. E. Russell* for complainant.
Claudian B. Northrop for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation, manufactures lumber at Andrews, N. C. By complaint filed February 28, 1917, as amended, it alleges that due to misrouting unreasonable charges were collected on a carload of lumber shipped January 14, 1916, from Andrews to New York, N. Y. It asks reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 39,800 pounds, was delivered to the Southern Railway at Andrews, a local point, routed "Pot. Yds. for B. & O. del." It moved over the Southern to Potomac Yard, Va., and thence over the Philadelphia, Baltimore & Washington and the Pennsylvania railroads to destination, at a rate of 30.5 cents, and was accepted by the consignee. A rate of 26.5 cents was contemporaneously in effect by way of the Southern to Potomac Yard and the Baltimore & Ohio Railroad to New York. Because of an embargo on the latter line, in effect when the shipment originated, the specified routing beyond Potomac Yard could not be followed, and upon arrival of the shipment at that point complainant was so advised. It thereupon authorized delivery of the shipment by any available route, but it is alleged in the complaint and denied in the Southern's answer that this was upon condition that the 26.5-cent rate should be protected. No evidence touching that question was adduced. The Southern admits responsibility in accepting an embargoed shipment and expresses willingness to make reparation.

A rate of 26.5 cents contemporaneously applied from Andrews to New York over the Southern by way of Pinners Point, Va., and the

New York, Philadelphia & Norfolk and the Pennsylvania railroads beyond. The agent of the initial line should not have executed the bill of lading without first calling the shipper's attention to the existing embargo and obtaining further routing instructions, and it is not shown that complainant's subsequent amendment of the routing authorized the selection of the route employed. The carrier thus at fault must be held to have misrouted the shipment and to be responsible for the damage occasioned thereby.

We find that the shipment was misrouted by the Southern Railway Company; that the shipment was made as described; that complainant assumed and bore the charges in so far as they exceeded those that would have accrued at the rate of 26.5 cents per 100 pounds; and that it has been damaged, and is entitled to reparation from the Southern Railway Company, in the sum of $15.92, with interest.

An appropriate order will be entered.

No. 9686.

SWIFT & COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted October 26, 1917. Decided May 9, 1918.

Local rates on inbound less-than-carload shipments of live poultry from Missouri points to Trenton, Mo., there dressed, and shipped out in carload lots to interstate destinations, found to have been applicable. Complaint dismissed.

R. D. Rynder for complainant.

Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is engaged in the packing-house business at Chicago, Ill. By complaint filed January 29, 1917, as amended, it alleges that during the period from February, 1915, to July 21, 1915, it forwarded numerous less-than-carload shipments of live poultry from various points in Missouri to Trenton, in that state, where the poultry was dressed and shipped in carload lots to various destinations in other states; that on said shipments into Trenton defendants collected and have retained their local less-than-carload rates, whereas they had contemporaneously in effect lower concentration rates applicable in such cases to the inbound shipments; wherefore complainant has been subjected to illegal charges, in violation of section 6 of the act, and asks reparation in the sum of $165.70.

It is stipulated by the parties that the complainant complied with all the requirements of the governing transit tariff, save only as it is in dispute whether in character the outbound shipments were within its provisions, which, as far as material, were as follows:

Following mileage rates will apply jointly or locally between points on C., B. & Q. R. R., I. & St. L. Ry., or Q., O. & K. C. R. R., in Missouri named herein, on shipments to concentrating points.

Poultry, live or dressed, butter and eggs, less than carload, from points in Missouri to concentrating points:

* * * * * * *

Shipments should be billed to concentrating points at regular tariff rates, and upon surrender of paid freight bills into such concentrating points, together with evidence covering an equal amount of tonnage shipped out in straight

or mixed carload quantities, the above rates will apply on the in shipments. *The freight bills surrendered must represent in character the commodity and the tonnage of the shipment forwarded.* [Italics ours.]

Complainant relies primarily upon its interpretation of the italicized sentence in the foregoing provision. It argues that the dressed poultry outbound represented "in character" the live poultry shipped in; that the restriction contemplated merely an outbound movement of a commodity of the same class as that inbound, as eggs for eggs or poultry for poultry, and did not except some treatment of the article at the concentrating point; that if the outbound shipments in this case did not represent in character the inbound shipments the sentence was meaningless; and cites *Regulations as to Storage of Dairy Products*, 35 I. C. C., 469, wherein we said that it was the practice of certain western lines to permit dressing of poultry at concentrating points. Complainant also observes that the tariff in question did not define "concentration" and cites, as relevant to show the meaning to be given thereto, another of defendants' tariffs which defined concentration as including dressing of poultry in transit.

The clause in question, considered in connection with the entire provision, plainly excluded substitution of any kind; and the dressing of poultry changes its character precisely as dressed meats are made to differ from live stock. If the character of the inbound commodity was not changed in transit, then with equal force it could be maintained that outbound shipments of lumber manufactured from logs or milled grain products represent in character the inbound raw material. Transit rights must be specifically authorized by tariff provision; they can not be inferred. *Moore Stave Co.* v. *Morgan's L. & T. R. R. & S. S. Co.*, 41 I. C. C., 472. The practice of western carriers generally to permit dressing in transit could not be considered as enlarging the provisions of defendants' tariff; and it is not out of place to add that, following *Regulations as to Storage of Dairy Products*, *supra*, the tariff provision here considered was canceled July 21, 1915.

The cited tariff of defendants, which defined concentration as including dressing in transit, had no connection with the tariff under consideration, and could not be regarded as supplying in the latter an artificial definition. The concentration contemplated in this instance therefore can be taken to have been nothing more than the collection at a particular point of less-than-carload quantities of the commodities named for the sole purpose of reforwarding them in carload lots.

We find that the local less-than-carload rates into the transit point were legally applicable, and an order dismissing the complaint will be entered.

No. 9763.

BATESVILLE EXCELSIOR COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY ET AL.

Submitted November 10, 1917. Decided May 9, 1918.

Rate on excelsior in carloads from Batesville, Ark., to El Paso, Tex., found justified. Complaint dismissed.

A. K. Goodnight for complainant.

J. A. Lynch for Texas & Pacific Railway Company and its receivers.

F. B. Clark for Missouri Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of excelsior at Batesville, Ark. By complaint filed April 14, 1917, as amended, it alleges that the rate charged by defendants on a carload of excelsior shipped June 10, 1916, from Batesville to El Paso, Tex., was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

Batesville is on the White River division of the Missouri Pacific Railroad, 1,117 miles from El Paso. The shipment, weighing 31,700 pounds, moved over defendants' lines. Charges were collected in the sum of $190.20 at a commodity rate of 60 cents. Complainant contends that the rate charged was unreasonable to the extent that it exceeded a commodity rate of 41 cents, minimum 20,000 pounds, in effect for a number of years prior to April 1, 1916. As the rate assailed represents an increase subsequent to January 1, 1910, the burden is on the defendants to justify it.

Generally speaking, the class and commodity rates from Batesville to the Texas common points and to El Paso are and long have been the same as from St. Louis, Mo. Prior to April 1, 1916, the rates from Batesville and St. Louis to El Paso were constructed by adding differentials to the Texas common-point rates, these differentials being based on the short-line distance from the Texas common points to Laredo, Tex., a point over 200 miles nearer the

Texas common-point group than is El Paso. The differential applicable on excelsior was the class D differential of 5 cents, which, added to a rate of 36 cents from Batesville to the Texas common points, resulted in the 41-cent rate. But these rates were 11 cents lower than the rates from St. Louis. Defendant states that excelsior from Batesville was excepted from the usual basis of rates to the Texas common points because Batesville is nearer than St. Louis to Dallas and Fort Worth, Tex., large consuming points in the northeastern part of the Texas common-point group to which all the traffic was moving at that time, and that as a result of this adjustment and the method of constructing rates to El Paso the 41-cent rate was materially lower than would ordinarily have been established and also lower than the rate to certain intermediate points west of the Texas common points.

In *Corporation Commission of New Mexico* v. *A., T. & S. F. Ry. Co.*, 34 I. C. C., 292, we denied these defendants and other carriers authority to continue rates on various commodities, including excelsior, from St. Louis and defined territories to El Paso lower than to intermediate points. Defendants testified that a compliance with the order in that case necessitated a general revision of the rates to El Paso, which resulted in the discontinuance of the long-established practice of making rates to El Paso with relation to the rates to Texas common points, and the establishment of rates to El Paso and surrounding territory upon an entirely new basis. As a part of this revision, rates of 60 cents were established on April 1, 1916, from St. Louis and Batesville to all points on the Texas & Pacific Railway between El Paso and Pecos, Tex., inclusive, 214 miles. The same grouping of Texas points is observed with respect to rates from other defined territories.

The rate assailed yields 10.7 mills per ton-mile and, based on the 20,000-pound minimum, 10.7 cents per car-mile. Defendants assert that as excelsior is a light loading commodity and particularly as the haul is through a very sparsely settled country the rate is not unreasonable.

The rate assailed compares favorably, distance considered, with rates from other points to El Paso cited by complainant. The only points from which complainant meets competition are Chicago and Dubuque with rates of 66 cents to El Paso, and no showing is made that these rates result in any undue prejudice.

We find that defendants have justified the rate assailed and an order dismissing the complaint will be entered.

No. 9774.

GREEN BAY SPECIALTY COMPANY
v.
NEW YORK & LONG BRANCH RAILROAD COMPANY ET AL.

Submitted December 18, 1917. Decided May 9, 1918.

Less-than-carload shipment of pants from Asbury Park, N. J., to Green Bay, Wis., found to have been misrouted. Reparation awarded.

W. Sauber for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are William Sauber and Moritz Roseman, copartners, engaged in the manufacture of workingmen's garments at Green Bay, Wis., under the name of Green Bay Specialty Company. By complaint filed March 7, 1917, they allege that, due to misrouting, the charges collected on two cases of pants shipped June 10, 1916, from Asbury Park, N. J., to Green Bay were unreasonable. They ask reparation. Rates are stated in amounts per 100 pounds.

The shipment, weighing 1,210 pounds, was routed by the shipper "CRR and DL&W." It moved over the lines of the New York & Long Branch Railroad, Central Railroad Company of New Jersey, and Delaware, Lackawanna & Western Railroad to Black Rock, N. Y., and the Grand Trunk system by rail and car ferry to Milwaukee, according to the initial carrier's billing instructions, and beyond over the Chicago, Milwaukee & St. Paul Railway. Charges were collected in the sum of $14.38 at a combination of $1.188, composed of the joint first-class rate of 83.8 cents to Milwaukee, governed by the official classification, and the first-class rate of 35 cents beyond, governed by the western classification.

At the time of movement there was in effect a through combination rate of 89.8 cents, composed of the joint first-class rate of 83.8 cents from Asbury Park to Milwaukee or to Manitowoc, Wis., over the route of movement to Black Rock, thence to Pere Marquette, by way of Ludington, Mich., and car ferry across the lake, and a proportional rate of 6 cents from Milwaukee to Green Bay over the Chicago, Milwaukee & St. Paul, on traffic received from the Pere Marquette.

We find that the New York & Long Branch Railroad Company misrouted the shipment; that complainants paid and bore the charges thereon; that they were damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued if the shipment had been forwarded over the Pere Marquette Railroad; and that they are entitled to reparation from the New York & Long Branch Railroad Company in the sum of $3.51, with interest.

An appropriate order will be entered.

No. 9792.

J. I. LAMB COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted November 20, 1917. Decided May 9, 1918.

Rate on strawberries, in carloads, from Villa Ridge, Ill., to La Crosse, Wis., not shown to have been or to be unreasonable. Complaint dismissed.

W. W. West for complainant.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

In the complaint in this case, filed July 19, 1917, it is alleged that the charges collected by defendants on four carloads of strawberries shipped in May, 1916, from Villa Ridge, Ill., to La Crosse, Wis., were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 52 cents, minimum 17,000 pounds. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

The shipments were routed by the shipper, "Dubuque % C., M. & St. P.," and moved over the Illinois Central Railroad to Dubuque, Iowa, and the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, beyond, 565 miles. The shipments aggregated 73,264 pounds, and charges were collected in the sum of $406.48, at the legally applicable combination rate of 52 cents, composed of

the fourth-class rate of 27 cents, minimum 20,000 pounds, governed by the Illinois classification, to Dubuque, and the third-class rate of 26 cents, minimum 17,000 pounds, governed by the western classification, beyond.

A joint third-class rate of 52 cents, minimum 17,000 pounds, governed by the western classification, was contemporaneously applicable on like traffic over the Illinois Central to Madison, Wis., and the Milwaukee beyond, 579 miles; also over the Illinois Central to East Dubuque, Ill., and the Chicago, Burlington & Quincy Railroad, hereinafter termed the Burlington, beyond, 559 miles. Complainant states that not only is the route over which the shipment moved 14 miles shorter than by way of Madison but it is faster. As the line of the Milwaukee from Dubuque runs west of the Mississippi River, the route of movement necessitated crossing the river at East Dubuque and at La Crosse.

The Milwaukee states that the Illinois Central has been authorized to publish the joint rate of 52 cents by the route of movement, but there is no admission on its part that the rate charged was unreasonable. The component from Villa Ridge to East Dubuque is fixed by the Illinois Railroad & Warehouse Commission, and, as is customary, the intrastate rate is also applied to Dubuque. The 52-cent rate by way of Madison was published to meet the competitive rate by way of East Dubuque.

The existence of a lower rate over other routes does not of itself warrant a condemnation of the rate charged. If complainant had not routed the shipments or had designated either of the routes by which the 52-cent rate applied, it could have avoided the damage alleged. *Seidel Lumber Co.* v. *M. P. Ry. Co.*, 39 I. C. C., 670.

We find that the rate charged is not shown to have been or to be unreasonable. An order dismissing the complaint will be entered.

No. 9261.

CASEY-HEDGES COMPANY
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted March 22, 1917. Decided May 9, 1918.

Shipments of cast-iron pipe and fittings, in carloads, from Chattanooga, Tenn., to Manila, P. I., found to have been overcharged. Reparation awarded.

O. L. Bunn for complainant.

R. Walton Moore and *Willis H. Fowle* for Alabama Great Southern Railroad Company and New Orleans & Northeastern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of cast-iron pipe and fittings at Chattanooga, Tenn. By complaint filed October 16, 1916, it alleges that the rate of $16 per net ton charged by defendants on five carloads of cast-iron pipe and fittings, less than 8 inches in diameter, shipped August 12, 1915, from Chattanooga to Manila, P. I., was illegal, unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded $13. Reparation and the establishment of reasonable rates are asked. At the hearing complainant sought to amend the complaint to include a prayer for the refund of $21 demurrage charges assessed for the detention of these shipments at Chattanooga. This amendment was objected to by the Alabama Great Southern and the New Orleans & Northeastern railroads, the only defendants represented at the hearing, and will not be considered.

The shipments moved over defendants' lines by way of San Francisco, Cal. Complainant prepaid the charges at a rate of $16 per net ton. Effective from May 12 to September 15, 1915, the defendant rail carriers published in an agency tariff a through carload rate of 65 cents per 100 pounds, or $13 per net ton, minimum 60,000 pounds, on cast-iron pipe and connections not exceeding 8 inches in diameter, over the route of movement from Chattanooga to Manila. The same tariff item named an export rate of 45 cents per 100

pounds to San Francisco, which rate is still in effect. On September 15, 1915, the defendant rail carriers increased the through rate to Manila to 80 cents per 100 pounds, or $16 per net ton. This rate was canceled on July 1, 1916. The tariff naming the $13 rate was subject to the following provision:

Through bills of lading will be issued in connection with Pacific Mail Steamship Company. * * * Bills of lading should show name and address of consignee. * * * Bills of lading must show export rates (rail proportion) to * * * San Francisco. * * * Through rates to Manila, P. I., apply only via steamers making direct call, and all charges must be prepaid.

A special rule, rule 16, provided that—

Freight must not be contracted for through transportation until specific reservation of ocean space has been secured and confirmed by the * * * Southern Pacific Company.

The title-page of this tariff recites that the rates therein were issued under authority of rule 71 of our Tariff Circular 18-A. Defendant Pacific Mail Steamship Company was not named in the list of participating carriers, but in 1907 it filed with us its concurrence in any rate published by the Southern Pacific Company or its agents, applying "via its line and to but not from points thereon," which concurrence is still in force.

Complainant testified that these shipments were sold f. o. b. destination and that in making the price it based its calculation of freight charges that would accrue on a through rate of $13 per net ton. For some time prior to the movement negotiations had been in progress between complainant and defendants with respect to the rate and steamship space. On July 29, 1915, the agent of the Southern Pacific Railway Company at St. Louis, Mo., wired complainant as follows:

Can now quote you rate of thirteen dollars ton pipe, Chattanooga-Manila for sailing *Mongolia*, August twenty-fifth; shipments must be San Francisco August eighteenth; advise if we shall book this basis. Answer.

To this complainant replied by wire on the same day:

Book for us two hundred tons, more or less, cast-iron pipe and fittings, Manila, for sailing *Mongolia*, August twenty-fifth; quote steamship line and date sailing, confirming Chattanooga office Q. & C. (Queen and Crescent route), protecting rate 65 cents through.

Complainant began loading the material immediately and tendered the cars as loaded to the initial carrier, which refused to issue bills of lading naming the published through rate of $13 per net ton and held the cars at Chattanooga. On August 8, 1915, the agent of the Southern Pacific telegraphed complainant that it was—

Impossible to protect rate thirteen dollars ton pipe Chattanooga to Manila. Advise by wire if we shall arrange for space at sixteen dollars ton.

The bills of lading were issued on August 12, 1915, showing the "export" rail rate of 45 cents and an unpublished ocean rate of 35 cents.

The Alabama Great Southern and the New Orleans & Northeastern contend that the through rate published in the tariff mentioned was not binding because the water transportation was not within our jurisdiction; and that it was published for convenience and information only in accordance with rule 71 of our Tariff Circular 18-A. The Southern Pacific lines by their joint answer admitted that the published through rate in effect at the time of movement was $13 and that the Southern Pacific controlled the Pacific Mail Steamship Company.

It is our opinion that the through transportation from Chattanooga to Manila was subject to the act and to our jurisdiction; that the joint rate of 65 cents was properly concurred in by the water carrier; that its application was not affected by rule 71 of Tariff Circular 18-A or by the failure to name the Pacific Mail Steamship Company in the tariff as a participating carrier; and that it was legally applicable to the shipments in question. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged to the extent that the transportation charges paid exceeded those that would have accrued at the rate herein found legally applicable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rates found legal and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

In view of the abnormal conditions affecting ocean transportation, no finding or order for the future will be made.

No. 9835.

ELECTRIC CONTROLLER & MANUFACTURING COMPANY
v.
AMERICAN EXPRESS COMPANY.

Submitted December 1, 1917. Decided May 9, 1918.

Express charges on slate, in less than carloads, from Monson, Me., to Cleveland, Ohio, found to have been illegal and unreasonable. Reparation awarded.

W. T. Kinder for complainant.

E. H. Hopkins for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of electrical appliances at Cleveland, Ohio. By complaint filed June 14, 1917, it alleges that the double first-class rate charged by defendant for the transportation by express of six less-than-carload shipments of slate slabs or panels, in crates, from Monson, Me., to Cleveland, between June 16 and July 28, 1916, inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 10,683 pounds, moved as alleged. Charges were collected in the sum of $512.36 at the double first-class rate of $4.80 governed by the official express classification. The correct charges were $512.78, so that there is an outstanding undercharge of 42 cents. Prior to May 1, 1916, the official express classification rated slate and marble, in boxes or crates, "at owner's risk of breakage," first class, and without limitation as to breakage, double first class. It was and is the invariable practice of complainant, in making its shipments of slate, to assume the risk of breakage in transit. On the date mentioned the rating on slate was increased to double first class without limitation as to liability of breakage, while marble, without such limitation, was continued at first class. On August 1, 1916, the first-class rate was reestablished on slate without limitation as to liability for breakage, and still applies.

Complainant urges that the conditions surrounding the transportation of slate and marble in crates are identical and that marble is more valuable than slate. There is no proof of unjust discrimination

or undue prejudice. As the rate assailed represented an increase subsequent to January 1, 1910, the burden was upon defendant to justify it. Defendant explained that the publication of the higher rate was due to an error and that its intention was to continue the first-class rate in effect during the period the shipments moved.

We find that the rate assailed was unreasonable to the extent that it exceeded $2.40 per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $255.97, with interest. Collection of the undercharge referred to may be waived.

An order awarding reparation will be entered, but as the $2.40 rate has been in effect for more than a year no order for the future is necessary.

No. 9837.

WILLIAM K. NOBLE

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 4, 1917. Decided May 9, 1918.

Charges on a carload of yellow-pine heading from Dallas, Ala., to West Rutland, Vt., found to have been illegal and unreasonable. Reparation awarded.

Robert L. Larimore for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a dealer in cooperage stock at Fort Wayne, Ind. By complaint filed August 20, 1917, as amended, he alleges that the rate charged by defendants on a carload of pine heading shipped February 10, 1916, from Dallas, Ala., to West Rutland, Vt., was unreasonable and that the charges were computed on the basis of an erroneous weight. He asks reparation. Rates are stated in cents per 100 pounds.

The shipment consisted of kiln dried yellow-pine heading, and moved over the Louisville & Nashville Railroad to Cincinnati, Ohio; Pittsburgh, Cincinnati, Chicago & St. Louis Railroad and Pittsburgh, Fort Wayne & Chicago Railway to Allegheny, Pa.; Pennsylvania Railroad to Wilkes-Barre, Pa.; and the Delaware & Hudson Company beyond. Charges were collected in the sum of $233.02, based on a weight of 53,200 pounds and a combination rate of 43.8 cents, composed of 21.5 cents to Cincinnati and 22.3 cents beyond. The rate legally applicable was a combination commodity rate of 41.8 cents, composed of 19.5 cents to Cincinnati and 22.3 cents beyond, so that the shipment was overcharged 2 cents per 100 pounds. The shipment was weighed on track scales at Boyles, Ala., a point intermediate to Cincinnati from Dallas, the certificate of the weighmaster at that point showing the net weight as 43,200 pounds. Complainant urges that this weight closely approximates his estimate.

Defendants contemporaneously maintained a rate of 34 cents over the route of movement from Dallas to West Rutland on undressed

yellow-pine lumber, including baseboards, bed slats, blocks, casing, ceiling, molding, hoops, lath, poles, rails, siding, and similar lumber products. On September 5, 1916, yellow-pine heading was added to this list and now takes the 34-cent rate from and to these points. We have heretofore held that the rates on heading should not exceed the rate on lumber of the kind from which the heading is manufactured. *Rates on Hardwood Lumber*, 21 I. C. C., 397.

We find that the charges collected were illegal to the extent that they exceeded those that would have accrued at a rate of 41.8 cents per 100 pounds and a weight of 43,200 pounds; and that the rate legally applicable was unreasonable to the extent that it exceeded 34 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found legal and reasonable; and that he is entitled to reparation in the sum of $86.14, with interest.

An order awarding reparation will be entered, but as the rate found reasonable has been in effect for more than a year no order for the future is necessary.

No. 9912.

MERCHANTS FREIGHT BUREAU OF LITTLE ROCK, ARK.,

v.

MISSOURI PACIFIC RAILROAD COMPANY.

Submitted February 12, 1918. Decided May 9, 1918.

Rate on green salted hides, in carloads, from Memphis, Tenn., to Fort Smith, Ark., found to have been and to be unreasonable. Maximum reasonable rate prescribed. Reparation denied.

A. R. Bragg for complainant.

Henry G. Herbel for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint was filed October 15, 1917, by the Merchants Freight Bureau of Little Rock, Ark., a voluntary association of merchants and manufacturers, on behalf of the Western Hide & Fur Company, a corporation engaged in the hide and fur business at Little Rock and hereinafter referred to as complainant. It is alleged that the rate charged by the defendant on two carloads of green salted hides shipped from Memphis, Tenn., to Fort Smith, Ark., in February and May, 1917, was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipments moved over the St. Louis, Iron Mountain & Southern Railway, now the Missouri Pacific Railroad, a distance of 308 miles. Charges were collected on the first shipment in the sum of $159.03, based on a weight of 40,778 pounds and a rate of 39 cents, the fifth-class rate applicable under the governing western classification. On the remaining shipment charges were collected in the sum of $159.60, based on a weight of 41,000 pounds and the 39-cent rate. The correct charges on that basis would have been $159.90. This shipment was apparently undercharged 30 cents. Complainant contends that the 39-cent rate was and is unreasonable to the extent that it exceeded and exceeds a commodity rate of 26 cents contemporaneously maintained by defendant on like traffic from Fort Smith to Memphis.

Defendant states that the general volume of movement of hides, in carloads, is from Arkansas and eastern Oklahoma points to Memphis

and to such points as Cairo and Chicago, Ill., and St. Louis and Kansas City, Mo., important concentrating and manufacturing centers; that there are only occasional movements of hides in the opposite direction and, therefore, no necessity for the establishment of commodity rates; and that if a commodity rate is established on hides from Memphis to Fort Smith it would result in demands upon various carriers also to establish commodity rates from Cairo, St. Louis, and Kansas City to Fort Smith and related points. Complainant is nevertheless entitled to a reasonable rate.

There has been apparently little movement of this traffic from Memphis to Fort Smith in the past, but complainant states that it will be in a position to handle other carloads of hides from and to those points if the rate is properly adjusted.

The record shows that the defendant maintained at the time of movement and still maintains a commodity rate of 12.5 cents on hides from Memphis over the same route to Little Rock, 148 miles. This rate is 125 per cent of a commodity rate of 10 cents applicable in the opposite direction. That percentage applied to the commodity rate of 26 cents from Fort Smith to Memphis would result in a rate of 32.5 cents, which would yield over 2 cents per ton-mile. While the rate in one direction is not always a fair test of what the rate should be between the same points in the opposite direction, and the greater volume of the traffic eastbound may well justify a somewhat lower rate from Fort Smith to Memphis, we are of opinion that the disparity in the rates is too great. The rate assailed yields 2.5 cents per ton-mile and based on 41,000 pounds, the approximate loading of the shipments, nearly 52 cents per car-mile.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed 32.5 cents per 100 pounds. The allegation of discrimination is not sustained. Complainant paid a portion of the freight charges, but the record fails to establish that it bore such charges. There is therefore no basis for an award of reparation.

An appropriate order will be entered.

No. 9456.[1]

INDIAN REFINING COMPANY
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 2060.

Submitted July 11, 1917. Decided May 9, 1918.

1. Rate on petroleum and its products, in tank-car loads, from Lawrenceville, Ill., to Detroit, West Detroit, and Jackson, Mich., found to have been and to be unreasonable. Reparation awarded.
2. Fourth section relief granted in part.

Richmond Weed for complainant.
Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in refining petroleum at Lawrenceville, Ill. By complaints filed December 30, 1916, it alleges that the rates of 16.3 cents per 100 pounds charged by defendants on petroleum and its products, in tank-car loads, shipped from Lawrenceville to Detroit, West Detroit, and Jackson, Mich., since January 2, 1915, were unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section to the extent that they exceeded 15.6 cents. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

Lawrenceville is in what is known as the Bridgeport oil field, in southeastern Illinois, and is served by the Baltimore & Ohio Southwestern Railroad and the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four. West Detroit is within the switching limits of Detroit. The evidence is conflicting as to the

[1] The report also embraces No. 9456 (Sub-No. 1), Same *v.* Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.; No. 9456 (Sub-No. 2), Same *v.* Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.; No. 9456 (Sub-No. 3), Same *v.* Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.; and No. 9456 (Sub-No. 4), Same *v.* Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.

short-line distances over workable routes from Lawrenceville to Detroit and Jackson, defendants showing the distances as 402 and 341 miles and complainant as 396 and 340 miles, respectively. The shipments moved over defendants' lines by various routes and charges were collected at commodity rates of 16.3 cents, legally applicable. The general basis of rates on petroleum and its products in central freight association territory is 90 per cent of fifth class, governed by the official classification. The fifth-class rates contemporaneously in effect over the routes of movement were 17.3 cents, and 90 per cent thereof, which will hereinafter be referred to as the petroleum class rate, would be 15.6 cents.

Complainant submitted numerous comparisons showing that competing points in central freight association territory are generally accorded rates on petroleum to the same destinations not higher than 90 per cent of fifth class. It also cited rates of 15.6 cents between points in central freight association territory for somewhat greater distances. The petroleum class rates between the points in question were 15.1 cents in the opposite direction. Defendants submitted comparisons of rates on petroleum from other producing points in central freight association territory, tending to show that the 16.3-cent rate was not unreasonable. They also cited rates for approximately the same distances between points in the south and southwest, which are upon a somewhat higher basis, but it was not shown that the transportation conditions are similar. For a distance of 400 miles the ton-mile earnings under the rates assailed would be 8.15 mills and under the rates sought 7.8 mills. The fact that there is such a slight disparity between the rates tends to lessen the probative value of the rate comparisons. It was pointed out that commodity rates on petroleum exceeded the corresponding petroleum class rates from certain other points in the Bridgeport oil field to these destinations, and this was said to require a similar adjustment from Lawrenceville. But there does not appear to have been a consistent relationship maintained between the commodity rates from Lawrenceville and other points in the Bridgeport oil field or between the commodity and petroleum class rates from those points. Defendants admit that 90 per cent of fifth class is a reasonable basis for petroleum when the class rate is in accord with the central freight association distance class scale, but assert that the fifth-class rate from Lawrenceville was unduly depressed.

In 1904 the fifth-class rates from Lawrenceville to these destinations, by way of the Baltimore & Ohio Southwestern, were reduced from 18 cents to 16.5 cents, to equal the fifth-class rates from Vincennes, 10 miles east of Lawrenceville, which latter rates had been in effect for a number of years. Defendants stated that while the

short-line distance over a workable route from Vincennes to Detroit was 403 miles the 16.5-cent fifth-class rate was based on the central freight association distance scale of class rates for the 375-mile group. But the reason therefor is not disclosed. Also that the same rate was extended to Lawrenceville presumably to avoid a fourth section violation. It is contended that this resulted in a depressed fifth-class rate from Lawrenceville, and that when rates were established on petroleum from that point in 1907 and 1908 the rates to Detroit and Jackson were made 15.5 cents, approximately 90 per cent of 17.5 cents, the fifth-class rate under the central freight association distance scale for the 425-mile group, which, defendants state, would have been the normal basis from Lawrenceville to Detroit. In 1914 the fifth-class rates from Lawrenceville to Detroit and Jackson were increased to 17.3 cents and the commodity rates on petroleum to 16.3 cents, following *The Five Per Cent Case*, 31 I. C. C., 351. Defendants' explanation of the alleged depression of the class rates is based on the application of the central freight association distance scale to the distance from Lawrenceville to Detroit. It is apparent that the so-called normal basis for rates on petroleum was not consistently applied, for Jackson was grouped with Detroit and took the same rates, although the distance from Lawrenceville to Jackson would entitle it under the central freight association distance scale to the rates applicable for the 350-mile group, or 15.5 cents prior to the 5 per cent increase and 16.3 cents thereafter. Ninety per cent of these amounts would be 13.95 cents and 14.67 cents, respectively. The average of the distances shown by defendants from Lawrenceville to Detroit and Jackson is 371 miles, which is within the 375-mile group.

In 1916 the carriers proposed a general revision of the class rates in central freight association territory, and at the same time they proposed to abolish commodity rates on petroleum and establish in lieu thereof a uniform basis of 90 per cent of fifth class. In this revision they adhered more strictly to distance, and stated that the fifth-class rates which they proposed would have been 18 cents to Detroit and 16.5 cents to Jackson, and the petroleum class rates to those points 16 cents and 15 cents, respectively. The proposed rates were suspended and subsequently ordered canceled in the *C. F. A. Class Scale Case*, 45 I. C. C., 254, wherein we suggested a new scale, under which the fifth-class rates for distances between 401 and 420 miles would be 18 cents and between 341 and 360 miles 17 cents. Following *The Fifteen Per Cent Case*, 45 I. C. C., 303, there were established from Lawrenceville fifth-class rates of 20.5 cents to Detroit and 19.5 cents to Jackson, which rates are still in effect. A specific commodity rate of 18.5 cents now applies on oil from Lawrenceville to Detroit, which is 90 per cent of the fifth-class rate. No

commodity rate has been established from Lawrenceville to Jackson, the rate now in effect, by exception to the official classification being 90 per cent of fifth class or 17.5 cents.

We find that the rates assailed were, and for the future will be, unreasonable, to the extent that they exceeded or may exceed 90 per cent of the contemporaneously applicable fifth-class rates from and to the same points; that subsequent to January 2, 1915, complainant made numerous shipments of petroleum and its products from and to the points in question and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, charges collected and date thereof, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

Those portions of Fourth Section Application No. 2060 of agent J. F. Tucker, by which authority is sought to continue lower rates on petroleum and its products, in carloads, from Lawrenceville to State Fair and Dearborn, Mich., than to Detroit and other intermediate points; from Lawrenceville to Leoni, Mich., than to Jackson and other intermediate points; and from Allendale, Ill., to Detroit, West Detroit, and Jackson, than from Lawrenceville and other intermediate points, were heard with this case. These departures from the fourth section result from the application of petroleum class rates from or to the more distant points, while higher commodity rates exist from or to the intermediate points. Relief by way of the direct lines will be denied, but following *C. F. A. Class Scale Case*, 46 I. C. C., 475, the circuitous lines will be authorized to charge higher rates at intermediate points, provided that the rates to said intermediate points do not exceed 90 per cent of the fifth-class rates.

Appropriate orders will be entered.

No. 7146.[1]

MOUNT PLEASANT FERTILIZER COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 458, 542, AND 1952.

Submitted February 11, 1916. Decided May 6, 1918.

1. Rates for the transportation of fertilizer from Mount Pleasant, Tenn., to various points in the southeast not found to have been or to be unreasonable or unjustly discriminatory.
2. A shipment of fertilizer from Mount Pleasant to Heucks, Miss., found to have been misrouted and overcharged. Refunds directed.
3. Complaints dismissed, and fourth section relief denied.

H. M. Bates, jr., and *G. M. Stephen* for complainant.

Edw. D. Mohr and *J. M. Dewberry* for Louisville & Nashville Railroad Company.

Edward H. Hart for Alabama Great Southern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing fertilizer at Mount Pleasant, Tenn. The allegations of the complaint are that the rates charged by defendants for the transportation of certain shipments of fertilizer from Mount Pleasant to various points in Georgia, Alabama, Mississippi, and Kentucky were and are unreasonable and unjustly discriminatory, and that certain of the rates charged were in violation of the long-and-short-haul rule of the fourth section. Reparation is asked. These cases have been held awaiting disposition of the *Royster Guano Co. Case*, infra. Rates are stated in amounts per ton of 2,000 pounds.

The complaint in No. 7146, filed August 1, 1914, relates to one carload and one less-than-carload shipment of fertilizer shipped from Mount Pleasant to Brassfield, Ky., and certain carload shipments of fertilizer from Mount Pleasant to Collinsville, Porterville,

[1] This report also embraces No. 7837, Same *v.* Illinois Central Railroad Company et al.; No. 7837 (Sub-No. 1), Same *v.* Alabama Great Southern Railroad Company et al.; and No. 7750, Same *v.* Louisville & Nashville Railroad Company et al.

and Collbran, Ala., during the period from March 19, 1913, to April 22, 1914, both inclusive. The shipments to Brassfield moved by way of the Louisville & Nashville Railroad, hereinafter called the Louisville & Nashville. Charges were collected on the carload shipment at a combination rate of $3.40 and on the less-than-carload shipment at a combination rate of $4.08, based on Richmond, Ky. Since the shipments moved specific through rates on fertilizer of $2.80 in carloads and $3.36 in less than carloads have been published from Mount Pleasant to Brassfield. These rates are based on the distance scale of rates generally used by the Louisville & Nashville in publishing commodity rates on fertilizer. No specific evidence was adduced to show that the rates charged on the shipments to Brassfield were unreasonable or unjustly discriminatory. The fact that reduced rates were subsequently established does not, in itself, furnish a sufficient basis for an award of reparation.

Collinsville, Porterville, and Collbran are on the Alabama Great Southern Railroad, hereinafter called the Great Southern, between Attalla, Ala., and Chattanooga, Tenn. The shipments to those points are said to have moved by way of the Louisville & Nashville to Attalla, and the Great Southern beyond. Charges were collected thereon at joint rates of $2.30 to Collinsville and $2.52 to Porterville and Collbran. A rate of $2.20 is asked to each of these points. A $2.20 rate applied from Mount Pleasant to Fort Payne, Ala., which is just beyond the destinations involved. Since the shipments moved the rate to Fort Payne has been increased to $2.65, the rates to Collinsville and Porterville to $2.60, and the rate to Collbran to $2.65. Comparisons are made with the rates contemporaneously in effect from Mount Pleasant to points between Attalla and the points named as follows: $1.91 to Keener, Ala.; $1.76 to Crudup, Ala.; $1.72 to Reeseville, Lester, and Ramsey, Ala.; and $1.81 to Steel, Ala. The present rates to all of the last-named points range from $2.50 to $2.55. The distances from Mount Pleasant to Collinsville, Porterville, and Collbran range from 251 miles to 260 miles by the route of movement. In *Royster Guano Co.* v. *A. C. L. R. R. Co.*, 50 I. C. C., 34, a rate of $2.70 was prescribed on fertilizer in carloads, for distances over 250 miles to 260 miles, from Norfolk, Va., to points in North Carolina. The present rates from Mount Pleasant to Collinsville, Porterville, and Collbran compare favorably with that rate and with other rates on fertilizer between points in southern territory.

We find that the rates to Brassfield, Collinsville, Porterville, and Collbran are not shown to have been or to be unreasonable or unjustly discriminatory.

The complaint in No. 7837, filed March 18, 1915, relates to two carloads of fertilizer shipped from Mount Pleasant to Heucks, Miss.,

and one carload shipped from Mount Pleasant to Sulphur Springs, Ga., in February and March, 1914.

Heucks is a nonagency station on a branch line of the Illinois Central Railroad extending east from Brookhaven, Miss., to Monticello, Miss. The shipments to Heucks were not routed by the shipper. They moved: Louisville & Nashville to Mobile, Ala.; New Orleans, Mobile & Chicago Railroad to Hattiesburg, Miss.; Mississippi Central Railroad to Brookhaven; Illinois Central Railroad to destination. Charges were collected thereon at a rate of $3.85, but the dates of payment are not disclosed of record. A combination rate of $3.65, $2.95 to Brookhaven and 70 cents beyond, was legally applicable, so that the shipments were overcharged 20 cents per ton. A combination rate of $2.95 applied from Mount Pleasant to Heucks by way of the Louisville & Nashville and the Illinois Central railroads through Jackson, Miss.; $2.20 to Jackson and 75 cents beyond. Defendant Louisville & Nashville admits that it misrouted these shipments and is willing to make reparation on basis of the $2.95 rate.

Sulphur Springs is on the Great Southern, 31 miles south of Chattanooga, Tenn., 13 miles south of Trenton, Ga., and 3 miles north of Battelle, Ala. The shipment to Sulphur Springs moved by way of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway to Chattanooga and the Great Southern thence to destination. No joint rate was in effect, and charges were collected at a combination rate of $2.81, composed of a joint rate of $2.11 from Mount Pleasant to Battelle and a rate of 70 cents from Battelle back to Sulphur Springs. A rate of $2.11 is asked. A joint rate of $2.75 is now in effect from Mount Pleasant to both Sulphur Springs and Battelle, applicable only by way of the Louisville & Nashville to Attalla and the Great Southern beyond, approximately 288 miles. A rate on fertilizer of $2.90 for distances over 280 miles to 300 miles was prescribed in *Royster Guano Co.* v. *A. C. L. R. R. Co.*, *supra*. The rate charged is lower than the rates on fertilizer for similar distances between many other points in southern territory. It was lower than the rate contemporaneously applicable from Mount Pleasant to Trenton, although Trenton is intermediate from Mount Pleasant to Sulphur Springs by way of the route through Chattanooga. Defendants' fourth section applications, wherein authority is sought to continue rates on fertilizer from Mount Pleasant to Sulphur Springs lower than the rates contemporaneously maintained to Trenton, were set for hearing with the complaints. As the rate to Sulphur Springs now applies only by way of Attalla, the former discrepancies no longer exist. The fourth section applications will be denied.

We find that the rates to Heucks and Sulphur Springs are not shown to have been or to be unreasonable or unjustly discriminatory, but that the rate charged on the shipments to Heucks was illegal to the extent that it exceeded $3.65 per ton. We further find that defendant Louisville & Nashville Railroad Company misrouted the shipments to Heucks. All the carriers that participated in the movement of the shipments to Heucks are not parties to this proceeding. Defendants, in so far as they participated in the transportation of those shipments, will be expected promptly to refund to complainant the amount of overcharge, with interest. Defendant Louisville & Nashville Railroad Company also will be expected to refund to complainant, with interest, the charges incurred on account of the misrouting. If this is not done the matter may be brought to our attention.

The complaint in No. 7837 (Sub-No. 1), filed May 8, 1915, relates to two carloads of fertilizer shipped from Mount Pleasant to Trenton, on March 23, 1915. Trenton is on the Great Southern, 18 miles south of Chattanooga and 16 miles north of Battelle. The shipments moved by way of the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway to Chattanooga, and the Great Southern beyond. No joint through rate was in effect, and charges were collected at a combination rate of $3.10, composed of a joint rate of $2.10 from Mount Pleasant to Chattanooga and a rate of $1 beyond. A rate of $2.11 is asked. A rate of $2.11 applied from Mount Pleasant to Battelle, to which point Trenton is intermediate from Mount Pleasant by way of the route through Chattanooga. This departure from the long-and-short-haul rule of the fourth section was protected by an appropriate fourth section application. Since the shipments moved the rate from Mount Pleasant to Trenton has been reduced by the establishment of a joint through rate of $2.80, applicable only by way of the Louisville & Nashville to Attalla and the Great Southern beyond, and the fourth section departure no longer exists. The fourth section application will be denied.

We find that the rate charged on the shipments to Trenton is not shown to have been or to be unreasonable or unjustly discriminatory.

The complaint in No. 7750, filed February 13, 1915, relates to certain carloads of fertilizer shipped during the period from January 14, 1913, to April 21, 1914, both inclusive, from Mount Pleasant to points in Mississippi on the New Orleans, Mobile & Chicago Railroad, north of Decatur, Miss., to and including Brownfield, Miss. Some of the shipments are not shown to have been delivered within two years prior to the filing date of the complaint. The rates charged, the rates asked, and the present rates which were proposed

by defendants at the hearing and subsequently established on August 1, 1916, are as follows:

Rates on fertilizer from Mount Pleasant.

To—	Miles.	Rate charged.	Rate asked.	Present rate.
Brownfield, Miss	158	$3.00	$2.40	$2.40
Walnut, Miss	161	3.00	2.40	2.45
Tiplersville, Miss	164	3.00	2.40	2.45
Murray, Miss	175	3.00	2.40	2.50
Ripley, Miss	177	3.00	2.40	2.50
Blue Mountain, Miss	183	3.00	2.40	2.55
Cotton Plant, Miss	188	3.00	2.40	2.55
Ingomar, Miss	202	3.00	2.60	2.65
Ecru, Miss	207	3.00	2.60	2.65
Pontotoc, Miss	214	3.00	2.60	2.70
Gersborm, Miss	226	3.00	2.60	2.75
Woodland, Miss	248	3.20	2.80	2.85
Dancy, Miss	256	3.20	2.80	2.95
Cumberland, Miss	289	3.20	2.80	2.95
Louisville, Miss	301	3.20	2.80	3.15
Stallo, Miss	315	3.20	2.80	3.15
Burnside, Miss	320	3.20	2.80	3.15
Philadelphia, Miss	326	3.20	2.80	3.20
McDonald, Miss	334	3.20	2.80	3.20
Neshoba, Miss	337	3.20	2.80	3.20

The shipments moved by way of the Louisville & Nashville to Mobile and the New Orleans, Mobile & Chicago Railroad thence to destinations, over which route the distances from Mount Pleasant to the points named range from 633 miles at Neshoba to 812 miles at Brownfield. But the rates charged are not based on the distances over that route. The short-line distances are shown in the above table and are by way of the Louisville & Nashville to Sheffield, Ala., the Southern Railway to Middleton, Tenn., and the New Orleans, Mobile & Chicago Railroad beyond. Evidently the rates charged are based on this route or on the route through Birmingham, Ala., in connection with the St. Louis & San Francisco Railroad to New Albany, Miss., which latter route is somewhat longer than the former. By way of the direct routes the present rates are substantially in line with the distance scale of rates prescribed in *Royster Guano Co. v. A. C. L. R. R. Co., supra.*

We find that neither the rates charged on the shipments from Mount Pleasant to the Mississippi points in question nor the present rates are shown to have been or to be unreasonable or unjustly discriminatory.

Complainant's contention that the route traversed by the shipments through Mobile to points on the New Orleans, Mobile & Chicago Railroad is circuitous and unreasonable evidently is founded on a misapprehension of the tariff provisions as to routing. The rates applicable were not confined to any particular route of the carriers parties to the tariff naming the rates, and therefore the rates were applicable by way of the shorter routes as well as through Mobile.

The record shows that there are no divisions by way of the route through Sheffield and Middleton. We think that they should be arranged for immediately.

One of defendants' counsel makes specific reference in his brief to the interest which complainant's counsel may have in this proceeding, the fee which complainant may be required to pay its counsel for the prosecution of the case, the method used by complainant in discovering the alleged unlawfulness of the rates charged on its shipments, and other matters, which have no bearing upon the issues presented for determination. If an unlawful rate or practice exists, it is immaterial by whom or how the irregularity is discovered or through what channels the matter is brought to our attention, as each case must be submitted and dealt with on the pertinent facts of record.

The complaints will be dismissed.

COMMISSIONER WOOLLEY did not participate in the disposition of this case.

No. 9813.

AMERICAN LUMBER & EXPORT COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted December 12, 1917. Decided May 2, 1918.

Rate on lumber, in carloads, from Nadawah, Ala., to Cartersville, Ga., found to have been unreasonable. Reparation awarded.

A. J. Ribe for complainant.
Lee Clary for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Birmingham, Ala. By complaint filed June 20, 1917, it alleges that the rate of 22 cents per 100 pounds charged by defendant on a carload of yellow-pine lumber shipped June 13, 1916, from Nadawah, Ala., to Cartersville, Ga., was unreasonable to the extent that it exceeded 15.7 cents and in violation of the fourth section of the act in that it exceeded the aggregate of the intermediate rates to and from Atlanta, Ga. It asks reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 31,300 pounds, moved over defendant's line 420 miles. Charges were collected in the sum of $68.86 at the applicable class N rate of 22 cents, governed by the southern classification. There was contemporaneously in effect a combination rate of 15.7 cents based on Atlanta over another and shorter route and in connection with other carriers. As this rate did not apply over the route of movement, no departure from the rule of the fourth section is presented. Effective January 12, 1918, the 15.7-cent rate was established over the route of movement.

Complainant cites rates on yellow-pine lumber from Nadawah to numerous other points in Alabama and Georgia which produce revenues ranging from 4.9 to 8.4 mills per ton-mile. The rate charged and the present rate over the route of movement yielded and yield 10.5 and 7.5 mills per ton-mile, respectively. Defendant admitted that the rate charged was unreasonable to the extent that it exceeded the present rate and expressed willingness to make reparation accordingly.

We find that the rate assailed was unreasonable to the extent that it exceeded 15.7 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $19.72, with interest. An appropriate order will be entered.

No. 9453.

R. C. MILLS & COMPANY
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY.

Submitted June 30, 1917. Decided May 9, 1918.

Rate on apples in carloads, from Marshfield, Mo., to Tulsa, Okla., found to have been and to be unreasonable. Reasonable maximum rate prescribed and reparation awarded.

E. N. Adams for complainants.

Thomas Bond and *W. M. Powers* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are A. L. Mills and R. C. Mills, copartners, engaged in the wholesale produce business at Tulsa, Okla. By complaint, filed January 9, 1917, they allege that the rate of 45 cents per 100 pounds charged by defendant on a carload of apples shipped September 20, 1916, from Marshfield, Mo., to Springfield, Mo., reconsigned to Tulsa, was unreasonable to the extent that it exceeded 27 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 27,100 pounds, moved over defendant's line a distance of 211 miles. It was originally consigned to Springfield, but upon arrival at that point was reconsigned to Tulsa. Charges were collected in the sum of $121.95, based on a commodity rate of 45 cents, minimum 24,000 pounds. A distance commodity rate of 39 cents, minimum 24,000 pounds, was legally applicable, so the shipment was overcharged $16.26.

Complainants show that Springfield, which is 26 miles nearer Tulsa than is Marshfield, takes the Kansas City rate to Tulsa, which at the time the shipment moved, was 28 cents. On January 29, 1917, defendant proposed to establish a commodity rate of 27 cents, minimum 24,000 pounds, on apples, in carloads, from both Marshfield and Springfield to Tulsa. In the tariff naming this rate defendant made no provision for the cancellation of the commodity rates from Marshfield or of the 28-cent rate from Springfield, so that these rates are still in effect. Defendant states that the publication of the 27-cent rate, which is a group rate, was due to an extension of the group east to Dixon, Mo., which included Marshfield; that the 39-cent rate was not and is not unreasonable; and in brief states that it is not its intention to apply the 27-cent rate from Marshfield but to establish rates from that and other points east of Springfield certain arbitraries over the Springfield rate.

Complainants also refer to an intrastate rate of 6.7 cents applicable on this traffic from Marshfield to Springfield. Defendant states that the intrastate rate from Marshfield to Springfield is 7 cents; and that this rate was prescribed by the Public Service Commission of Missouri, is not on file with this Commission, and is applied by defendant on intrastate traffic under protest. The interstate rate from Marshfield to Springfield is a fifth-class rate of 12 cents.

We find that the rate legally applicable on this shipment was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed 29 cents per 100 pounds; that complainants made the shipments as described, and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of $43.36, with interest. Defendant's tariffs should be immediately revised so as to remove the conflicting rates.

An appropriate order will be entered.

No. 9299.

BARNUM RICHARDSON COMPANY

v.

CENTRAL NEW ENGLAND RAILWAY COMPANY ET AL.

Submitted March 19, 1917. Decided May 17, 1918.

Storage charges assessed on certain carloads of charcoal shipped from points in Pennsylvania and held on complainant's private siding at East Canaan, Conn., found to have been illegal. Refund directed.

Howard F. Landon for complainant.

S. S. Perry for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of pig iron at East Canaan, Conn. By complaint, filed October 27, 1916, it alleges that defendants' storage charges assessed at East Canaan on various carloads of charcoal shipped from points in Pennsylvania between December 4, 1914, and April 15, 1916, were illegal, unreasonable, and discriminatory. Reparation is asked as to a portion of such charges paid and relief from the payment of other charges demanded by defendants.

Complainant operates two pig-iron furnaces at East Canaan, the manufacture of the pig iron requiring large quantities of charcoal. Between December 4, 1914, and April 15, 1916, there were placed on complainant's private tracks near its furnaces which are one-eighth and one-fourth of a mile, respectively, from the main line of the Central New England Railway, 239 carloads of charcoal upon which demurrage charges were collected, which are not in controversy, and, in addition, storage charges were assessed by defendants in the sum of $1,266. Complainant paid $36 of this sum but refused to pay the balance. During the period covered by the complaint defendants' tariffs provided for the application of certain storage charges on explosives and other dangerous articles, including charcoal, held in excess of free time, but such charges were limited by the tariffs to explosives or other dangerous articles held in freight houses or on freight-house platforms. It follows that the storage charges were not applicable on these shipments.

We find that the storage charges in question were illegally assessed. The amount so collected should be refunded promptly, with interest. Upon receipt of advice that this has been done, an order dismissing the complaint will be entered.

No. 9727.

HALE-HALSELL GROCERY COMPANY
v.
NEW MEXICO CENTRAL RAILROAD COMPANY ET AL.

Submitted October 25, 1917. Decided May 17, 1918.

Rates on dried beans, in carloads, from Estancia, N. Mex., to Muskogee, Okla., and from Estancia, Willard, and Mountainair, N. Mex., to Durant, Okla., found to have been and to be unreasonable. Reasonable maximum rates prescribed and reparation awarded.

H. G. Struble for complainant.

F. A. Swenson for Atchison, Topeka & Santa Fe Railway Company and Panhandle & Santa Fe Railway Company; *George E. Schnitzer* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and El Paso & Southwestern Company; and *R. D. Williams* for Missouri, Kansas & Texas Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale grocery business at McAlester, Okla., with branches at Muskogee, Tulsa, Durant, and Coalgate, Okla. By complaint filed June 8, 1917, it alleges that the rates charged for the transportation of four carloads of dried beans from Estancia, Willard, and Mountainair, N. Mex., to Muskogee and Durant, delivered between November 12, 1915, and December 12, 1916, were unreasonable and unduly prejudicial. It asks reparation. Rates are stated in amounts per 100 pounds.

The first shipment originated at Estancia October 29, 1915, and moved over the New Mexico Central Railroad to Torrance, N. Mex., El Paso & Southwestern system to Santa Rosa, N. Mex., Chicago,

Rock Island & Pacific system, hereinafter called the Rock Island, to Calvin, Okla., and the Missouri, Oklahoma & Gulf Railway to Durant. It weighed 50,000 pounds, and charges were collected in the sum of $345 at the legally applicable combination rate of 69 cents, composed of 44 cents to Calvin and 25 cents beyond. A rate of 49 cents inserted in the bill of lading did not exist.

The second shipment, weighing 49,830 pounds, also originated at Estancia November 15, 1915, and moved, as routed by the shipper, over the New Mexico Central to Torrance, El Paso & Southwestern system to Santa Rosa, Rock Island to McAlester, and the Missouri, Kansas & Texas Railway, hereinafter called the M., K. & T., to Muskogee. Charges of $308.94 were collected, at the legally applicable combination rate of 62 cents, composed of rates of 44 cents to McAlester and 18 cents beyond. A joint rate of 44 cents, named in the bill of lading, had previously applied in connection with the St. Louis-San Francisco Railway, hereinafter called the Frisco, through Holdenville, Okla., but was canceled long before the shipment moved, and no lower rate than that assessed was available by any route.

The third shipment, weighing 36,000 pounds, originated at Willard December 15, 1915, and moved over the Atchison, Topeka & Santa Fe system, hereinafter called the Santa Fe, to Oklahoma City, Okla., and thence over the M., K. & T. to Durant. Charges of $291.60 were collected, at the legally applicable combination rate of 81 cents, composed of 44 cents to Oklahoma City and 37 cents beyond. Lower combination rates contemporaneously applied over other routes, but as the bill of lading specified routing through Oklahoma City and no rate was inserted therein this shipment was not misrouted.

The fourth shipment, which originated at Mountainair December 1, 1916, moved over the Santa Fe to Waynoka, Okla., and the Frisco to Durant. It weighed 40,000 pounds, and charges were collected in the sum of $456, at the applicable combination rate of $1.14, composed of 47 cents to Waynoka and 67 cents beyond.

Effective February 3, 1916, joint rates of 50 cents, minimum 36,000 pounds, were established from Estancia to Muskogee, in connection with the Frisco from Holdenville and the Missouri, Oklahoma & Gulf from Calvin, and are still in effect. From that date until April 1, 1916, the same rate applied over the route of movement, but the combination basis is now in effect. Defendants represented at the hearing expressed their willingness to establish the 50-cent rate over the route of movement from Estancia to Muskogee and rates of 59 cents from Estancia, Willard, and Mountainair to Durant, which is satisfactory to complainant. The rates proposed compare favorably with rates cited in comparison on the same traffic from and to

numerous points in the same general territory. The proposed route from Mountainair to Durant is over the Santa Fe to Oklahoma City and the M., K. & T. or Frisco, or both, beyond.

Upon all the facts of record we find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed rates of 50 cents per 100 pounds from Estancia to Muskogee and 59 cents per 100 pounds from Estancia, Willard, and Mountainair to Durant. We further find that complainant made the shipments as described and paid and bore the charges thereon; and that it was damaged and is entitled to reparation as follows: From all of the defendants, according as they participated in the transportation of the several shipments, in the amounts of the respective differences between the charges paid and those that would have accrued on the bases herein found reasonable, to wit: $50, with interest, on the first shipment; $59.79, with interest, on the second; $79.20, with interest, on the third; and $220, with interest, on the fourth.

An appropriate order will be entered.

No. 9302.

UNIVERSAL IRON & SUPPLY COMPANY
v.
CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Submitted March 26, 1917. Decided May 22, 1918.

Charges on an iron tank from Lima, Ohio, to Bogalusa, La., found to have been illegal and unreasonable. Reparation awarded.

John D. Fidler for complainants.
No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are the Walter A. Zelnicker Supply Company, a corporation, and Louis S. Simon, collectively trading as Universal Iron & Supply Company, and dealing in railway and miscellaneous supplies at St. Louis, Mo. By complaint, filed October 30, 1916, they allege that the charges collected on an iron tank shipped August 25, 1914, from Lima, Ohio, to Bogalusa, La., were based on an erroneous weight, and also that the rate of $1.27 per 100 pounds assessed thereon was unreasonable to the extent that it exceeded a combination rate of $1.05 based on Slidell, La. Reparation is asked. The claim was presented to the Commission informally February 18, 1915. Rates are stated in amounts per 100 pounds.

The shipment consisted of an empty iron tank 32 feet 8¼ inches long and 76 inches in diameter, which had previously been used on a tank car. It moved as routed over the Cincinnati, Hamilton & Dayton Railway to Cincinnati, Ohio; Cincinnati, New Orleans & Texas Pacific Railway and Alabama Great Southern and New Orleans & Northeastern railroads to Slidell, La.; New Orleans Great Northern Railroad to destination. Charges were collected in the sum of $129.54 based upon a weight of 10,200 pounds and a combination rate of $1.27, composed of the second-class rate, governed by the official classification, of 24 cents to Cincinnati, and the third-class rate, governed by the southern classification, of $1.03 beyond.

It appears that the scales of the Cincinnati, Hamilton & Dayton at Lima showed that another tank, exactly like the one referred to and

shipped from Lima on the same date, weighed 8,500 pounds, which is alleged to have been the weight of this tank. At the hearing complainants contended that the weight, based on the combined weights of its constituent parts, was 8,168 pounds. The weight used for certain cast parts, such as the dome and ends, were the actual weights of similar parts handled by complainants from time to time; that for the sheet material was obtained by multiplying the area and thickness of the sheets in the tank by the weight per square foot of such material as shown in the Carnegie Steel Company's manual. The tank was riveted with ½-inch rivets, which are stated to have weighed 200 pounds. It was testified for complainants that, based upon these figures and its experience in handling 3,000 of these tanks within the past three years, the weight of this tank could not possibly have exceeded 8,500 pounds. Defendants were not represented at the hearing. The only information available with respect to the weight upon which charges were assessed is contained in a letter filed in the informal correspondence, which indicates that this shipment was track scaled at Cincinnati. We find that the tank weighed 8,500 pounds, on the basis of which weight and the legally applicable combination rate of $1.27 the charges would have been $107.95, so that the shipment was overcharged $21.59.

At the time the shipment moved there were applicable over defendants' lines third-class rates, governed by the southern classification, of 75 cents from Lima to Slidell and 30 cents from Slidell to Bogalusa, but defendants' tariffs specifically provided for the construction of through rates by combinations on the Ohio River in the absence of joint through rates. These departures from the provisions of the fourth section were protected by appropriate fourth section applications which were denied on February 1, 1916, by Fourth Section Order No. 5217 in *Through Rates from Buffalo-Pittsburgh Territory*, 36 I. C. C., 325, since which date the Slidell combination has applied over the route of movement.

We find that the charges legally applicable on the shipment above described were unreasonable to the extent that they exceeded the charges that would have accrued on basis of the rates contemporaneously applicable to and from Slidell; that complainants made the shipment as described and paid and bore the charges thereon; and that they were damaged and are entitled to reparation in the sum of $40.29, with interest, which includes the overcharge above mentioned.

As order awarding reparation will be entered, but as the basis herein found reasonable has been in effect for more than a year no order for the future is necessary.

No. 9336.

OTTO IRVING WISE

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 10, 1917. Decided May 17, 1918.

Charges on a carload and numerous less than carloads of theatrical scenery and properties from New York, N. Y., to San Francisco, Cal., not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

Arthur Hellen for complainant.

E. P. Bates for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a resident of San Francisco, Cal. By complaint filed November 8, 1916, he alleges that the charges assessed by defendants on a carload and numerous less-than-carload lots of theatrical scenery and properties shipped July 10, 1914, from New York, N. Y., to San Francisco, were unreasonable. He asks reparation. The claim was presented to the Commission informally August 5, 1915. Rates are stated in amounts per 100 pounds.

All of the shipments moved over defendants' lines in two cars under one bill of lading. The carload shipment consisted of 127 pieces of scenery on frames, under 18 feet in length, and charges were assessed at the legally applicable second-class rate of $3.20, minimum 20,000 pounds, governed by western classification. The less-than-carload shipments aggregated 11,695 pounds, and in most instances charges were collected at the class and commodity rates legally applicable. Certain items, consisting of common pine door and window frames and wooden doors attached to their frames, aggregating 910 pounds, were assessed the third-class rate of $2.65. The first-class rate of $3.70 was legally applicable, so that these items were undercharged $9.55. Two items listed as "1 pkg. picture, under value, not crated or boxed" and "2 cases pictures, under value" were assessed the double first-class rate of $7.40, and the first-class rate of $3.40, respectively. The words "under value" are not explained. The western classification provided first-class rating on less-than-carload shipments of pictures in boxes, contents of each package not exceeding $50 in value, and so receipted for. It also provided that

shipments in boxes, value not stated, or shipments not in boxes, would not be taken. Defendants admit that they should not have received the shipment not boxed, but state that a rule providing that articles rated in boxes would take two classes higher when shipped in bundles, was the basis for the double first-class rate applied.

Higher rates applied to shipments of theatrical scenery in packages over 18 feet long than to shipments in packages not over that length. One of these shipments of scenery was in bundles over 18 feet long, and the higher rate was assessed. Complainant alleges that this scenery could have been folded less than 18 feet long, but that the initial carrier failed to advise complainant's agent of the difference in rates depending on the length of the package.

The tariffs also provided certain rates on some of the articles when the values did not exceed certain amounts and they were so receipted for, and higher rates when the values exceeded those amounts or were not stated. No values were stated with respect to any of these shipments and the higher rates were assessed. It is alleged that certain of these shipments were worth less than $50 per package; that had complainant known of the difference in rates based on value, the value would have been declared and the lower rates availed of; and that the initial carrier's agent did not advise complainant's agent of the difference in rates based on value, although the western classification provided that—

> * * * Agents should call shippers' attention to such ratings and where shippers desire to avail themselves of lower rates based on declared or invoice valuations, the following declaration must be inserted in the bill of lading and signed by shipper. * * *

Defendants admitted that this provision was not complied with and expressed a willingness to pay reparation on certain of the shipments upon the basis of the rates applicable to shipments not exceeding a value of $50 per package. The measure of the rates charged is not attacked. Complainant introduced no evidence with respect to the packing and value of these shipments. The record is incomplete through failure of complainant to produce witnesses familiar with the facts, and our efforts to arrange for production of such witnesses at a further hearing have proved unavailing.

We find that the charges assailed are not shown to have been unreasonable or otherwise unlawful, and an order dismissing the complaint must be entered.

No. 8051.[1]

AMERICAN REFINING COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted November 8, 1917. Decided May 15, 1918.

Charges applicable on certain carloads of petroleum tailings in tank cars from Okmulgee, Okla., to Gretna, La., reconsigned to Amesville, La., there barreled and reshipped to Westwego and New Orleans, La., for export, not shown to have been unreasonable, unjustly discriminatory, or otherwise in violation of the act. Complaints dismissed.

Geo. S. Ramsey, *Edgar A. de Meules*, *Malcolm E. Rosser*, *Sol H. Kauffman*, *George A. Henshaw*, *A. Carey Hough*, and *C. R. Earley* for complainant.

Frank Koch and *R. S. Shapard* for defendants.

W. S. Cornell for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant herein seeks reparation on certain tank-car loads of petroleum tailings shipped in April, May, June, and July, 1913, from Okmulgee, Okla., to Gretna, La., reconsigned thence to Amesville, La., barreled and reshipped to Westwego and New Orleans, La., for export. Rates are stated in cents per 100 pounds unless otherwise specified.

Gretna, Amesville, and Westwego are situated on the west bank of the Mississippi River, opposite New Orleans, and are served by the Texas & Pacific Railway. All the shipments, except one, moved from Okmulgee to Gretna through Sherman or Fort Worth, Tex., by way of the St. Louis & San Francisco Railroad, hereinafter called the Frisco, in connection with the Texas & Pacific. The excepted shipment moved by way of the Frisco to Hope, Ark., and the Louisiana & Arkansas Railway and the Texas & Pacific thence to Gretna. In accordance with complainant's instructions the petroleum tailings were back hauled from Gretna to Amesville, there barreled, and reforwarded in box cars to the ports of Westwego and New

[1] The report also embraces No. 8084, Same *v.* Texas & Pacific Railway Company et al.; and No. 8043, Same *v.* St. Louis & San Francisco Railroad Company et al.

Orleans, city front, and exported. Charges were collected at the export rate of 26 cents, minimum capacity of car, from Okmulgee to Gretna; $3 per car from Gretna to Amesville; $8 to $13 per car from Amesville to Westwego and New Orleans, city front, and one-half cent per 100 pounds for unloading at ship side. The following combination Class D rates, minimum capacity of car, were legally applicable for the haul from Okmulgee to Gretna: 62 cents on the shipments that moved through Sherman, based 22 cents to Sherman and 40 cents beyond; 67 cents on the shipments that moved through Fort Worth, based 27 cents to Fort Worth and 40 cents beyond; and 67 cents on the shipment that moved through Hope, based 39 cents to Alexandria, La., and 28 cents beyond. The shipments that moved through Sherman were undercharged 36 cents per 100 pounds and those that moved through Fort Worth and Hope 41 cents per 100 pounds. The $3 per car switching charge collected for the transportation from Gretna to Amesville applied only on intrastate traffic. Complainant urges that it took possession of the shipments at Gretna. The nature of the alleged possession is not disclosed, but the purpose evidently was to characterize the shipments as intrastate and to render the intrastate switching charge applicable. The evidence fails to show that the possession taken by complainant at Gretna was sufficient to change the essential character of the shipments. Moreover, complainant indisputably intended delivery at Amesville when the shipments were forwarded from Okmulgee. The commodity rate applicable to interstate shipments of petroleum tailings in barrels or in tank cars from Gretna to Amesville, 2.9 miles, was 10 cents, minimum 30,000 pounds. The average weight of the shipments was about 60,000 pounds, and the legal charges from Gretna to Amesville were approximately $60 on each car. For the movement from Gretna to Amesville the shipments were undercharged to the extent of the difference between the charges paid and the charges that would have accrued at the rate of 10 cents. A barreling-in-transit arrangement was established at Amesville July 3, 1913, after the shipments moved, and, on July 15, 1913, the rate on petroleum tailings in tank cars from Okmulgee to Westwego and New Orleans for export was reduced from 26 cents to 20 cents.

Complainant alleges that the 26-cent rate charged from Okmulgee to Gretna was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 20 cents, minimum 30,000 pounds, contemporaneously applicable on petroleum tailings in barrels, in carloads, from Okmulgee to Gretna, for export. The shipments in controversy were not exported from Gretna, nor did complainant so intend. The consignment to Gretna for export was avowedly for the sole purpose of evading the application of the legal

rate from Okmulgee to Amesville, the intended destination, where complainant operates a barreling plant. No export rate applied from Okmulgee to Amesville. The mere fact that the shipments first moved to Gretna is not sufficient to justify the application of the export rate to Gretna as a component of the through rate to Amesville.

Complainant further alleges that the rates on petroleum tailings in tank cars from Okmulgee to Amesville were unreasonable, unjustly discriminatory, and in violation of section 4 of the act in that they exceeded the export rate of 26 cents contemporaneously in effect on like traffic in tank cars from Okmulgee to Gretna, to which point Amesville is intermediate. The domestic rates on petroleum tailings in barrels or in tank cars from Okmulgee to Amesville were not greater than the rates that applied from Okmulgee to Gretna, and therefore not in violation of the long-and-short-haul rule of the fourth section.

Complainant further alleges that the absence of a barreling-in-transit arrangement at Amesville was unreasonable. Its barreling plant at Amesville was established in February, 1913, following an understanding with the Texas & Pacific that a barreling-in-transit arrangement would be promptly established at Amesville on shipments of petroleum tailings from Okmulgee to Gretna, New Orleans, and Westwego for export. Complainant abandoned its barreling plant previously operated at Okmulgee and began barreling at Amesville before the transit arrangement was established. No unjust discrimination in this respect is shown, complainant's whole contention being that the Texas & Pacific failed to establish the transit arrangement within a reasonable time after the barreling plant was established at Amesville. Complainant states that substantially all the shipments in controversy were forwarded from Amesville within the 60-day period as required under the present transit rule and were subsequently exported from the ports of Westwego and New Orleans, which operations would entitle the shipments to the benefit of the present transit arrangement if made retroactive. The present tariff rules authorizing barreling in transit at Amesville provide that the switching charges from Amesville to Gretna, New Orleans, city front, and Westwego and the unloading charges at ship side shall be included in the joint export rate of 20 cents. The shipments involved were consigned to Gretna, but were not exported therefrom, nor were they stopped in transit at Amesville en route to Gretna, as required under the present transit rules. When the shipments left Gretna they were not consigned to Westwego or New Orleans, city front, for export, but were back

hauled to Amesville for barreling. The present transit arrangement does not authorize the barreling in transit of shipments which are back hauled in the manner herein described.

Under all the circumstances, we are of opinion and find that the charges legally applicable on the shipments in controversy are not shown to have been unreasonable, unjustly discriminatory, or otherwise in violation of the act.

An order dismissing the complaints will be entered.

No. 6195.[1]

G. HEILEMAN BREWING COMPANY ET AL.
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted April 12, 1915. Decided May 22, 1918.

1. Following *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 37 I. C. C., 627, rates on beer, in carloads, from La Crosse, Wis., to certain destinations in the state of Minnesota, and on empty beer packages, returned, from the same points to La Crosse, not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Present rates on beer, in carloads, from La Crosse to Moorhead and Breckenridge, Minn., found to be unduly prejudicial as compared with the rates contemporaneously in effect on the same commodity from Chicago, Ill., and Milwaukee, Wis., to the same destinations. A proper relationship of rates prescribed for the future.
3. Rates on empty beer packages, returned, from Moorhead and Breckenridge to La Crosse, not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial.

George H. Gordon for complainants.

L. C. Mahoney for Chicago, Burlington & Quincy Railway Company.

Albert H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Charles Donnelly for Great Northern Railway Company and Northern Pacific Railway Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

[1] This report also embraces No. 6195 (Sub-No. 1), G. Heileman Brewing Company et al. v. Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are the G. Heileman Brewing Company and John Gund Brewing Company, corporations, engaged in the manufacture and sale of beer at La Crosse, Wis. By complaints filed October 3, 1913, as amended, they allege that the rates charged by defendants in No. 6195 on various shipments of beer, in carloads, from La Crosse to Glenwood, Thief River Falls, East Grand Forks, Oslo, Morris, Sauk Center, and Brainerd, Minn., and on empty beer packages, returned, from the said points to La Crosse, and in Sub-No. 1 on beer, in carloads, from La Crosse to Moorhead and Breckenridge, Minn., and on empty beer packages, returned, in the opposite direction, between July, 1911, and August, 1913, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The rates on beer from La Crosse to the destinations named in No. 6195 were made up of a commodity rate of 10 cents to Minnesota Transfer, Minn., and the fifth-class rates, governed by the western classification, beyond. A combination rate composed of one-half of the fourth-class rates, any quantity, to and from Minnesota Transfer, applied on empty beer packages, returned. The attack is directed against the components applicable within the state of Minnesota. In *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 37 I. C. C., 627, we considered circumstances growing out of rate legislation by the state of Minnesota similar to those which brought about the complaint in the instant case. Following that case, we find that the rates assailed in No. 6195 are not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial.

The attack upon the rates on beer from La Crosse to Moorhead and Breckenridge and on empty beer packages, returned, in the opposite direction is based mainly upon comparisons with the rates on like traffic between Chicago, Ill., and Milwaukee, Wis., and these Minnesota points.

La Crosse, located on the Mississippi River in western Wisconsin, is served by the Chicago, Burlington & Quincy, Chicago & North Western, and Chicago, Milwaukee & St. Paul railroads; Moorhead and Breckenridge, in western Minnesota, are served by the Great Northern and Northern Pacific railroads. The distance over the Chicago, Burlington & Quincy and Great Northern from La Crosse to Moorhead is 375 miles and to Breckenridge 348 miles; and from Chicago to Moorhead 674 miles and to Breckenridge 646 miles. The distances from and to these points in connection with the Northern Pacific are substantially the same. The distances over the Chicago,

Milwaukee & St. Paul and Great Northern from Milwaukee to Moorhead and Breckenridge are 566 miles and 539 miles, respectively. The class and commodity rates from Milwaukee to these destinations were and are the same as from Chicago, and a reference hereinafter to the rates from Chicago will include the rates from Milwaukee.

For several years prior to July 1, 1911, the fifth-class rates from Chicago to Moorhead and Breckenridge were 41.5 cents and 39 cents, respectively; from La Crosse to Moorhead, 25.7 cents and to Breckenridge, 24.9 cents. On beer these rates were applied from La Crosse to Moorhead and Breckenridge, but from Chicago defendants published commodity rates of 38.7 cents to Moorhead and 37.5 cents to Breckenridge. On July 1, 1911, the fifth-class rates from La Crosse to Moorhead and Breckenridge were increased to 31 cents and 30 cents, respectively, and to 42 cents from Chicago to Moorhead, no change being made in the fifth-class rate of 39 cents to Breckenridge. At the same time the commodity rates on beer from Chicago to these points were canceled, thereby making applicable the fifth-class rates. This was the situation when complainants' shipments moved. On October 20, 1913, defendants reestablished the former commodity rates from Chicago to Moorhead and Breckenridge, but no change was made in the rates from La Crosse to these points. Prior to July 1, 1911, the rates from La Crosse to Moorhead and Breckenridge were approximately 66 per cent of the Chicago rate; during the period the shipments moved, 74 per cent cent; and on and after October 20, 1913, 80 per cent.

It was testified that at Moorhead and Breckenridge complainants met considerable competition from beer shippers located at Chicago and Milwaukee. No substantial evidence was offered to show that the rates assailed were unreasonable *per se*.

For defendants it was asserted that the rates in the territory east of Minnesota Transfer are generally on a lower scale than those west thereof and it was urged that the rates from La Crosse to Moorhead and Breckenridge were justified in view of the fact that, unlike the movement from Chicago, a greater portion of the haul is in the higher rated territory. A number of exhibits were introduced on behalf of defendants comparing the rates assailed with higher fifth-class rates prescribed by us in other cases for similar distances.

Witnesses for the Northern Pacific and Great Northern testified that the rates from Chicago to the destinations named are made by these carriers to meet rates established by the Chicago, Milwaukee & St. Paul to points in North Dakota to which Moorhead and Breckenridge are intermediate. No evidence was submitted for the latter carrier, and there is nothing of record to indicate when the rates to the North Dakota points were established or the reason for their establishment.

We find that the rates charged on the shipments concerned in Sub-No. 1 are not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial, but that the present rates on beer, in carloads, from La Crosse to Moorhead and Breckenridge are unduly prejudicial as compared with the rates contemporaneously in effect on like traffic to the same destinations from Chicago and Milwaukee, and that for the future the rates on beer, in carloads, from La Crosse to Moorhead and Breckenridge should bear to the fifth-class rates contemporaneously in effect from and to those points the same percentage relationship as exists between the rates on beer, in carloads, from Chicago and Milwaukee and the fifth-class rates contemporaneously in effect from and to those points.

The rates on empty beer packages, returned, from Moorhead and Breckenridge to La Crosse and Chicago were during the period covered by the complaint and now are one-half of the fourth-class rate. We find that the rates assailed on the latter traffic are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial.

Appropriate orders will be entered.

No. 8858.

POTLATCH LUMBER COMPANY
v.
WASHINGTON, IDAHO & MONTANA RAILWAY COMPANY ET AL.

Submitted November 13, 1916. Decided May 17, 1918.

Two carloads of lumber were billed by the shipper from Potlatch, Idaho, to Victoria, Ill., Chicago, Peoria & St. Louis Railway delivery. Notwithstanding the abandonment of that station several years prior to the movements, and the absence of a published through rate to Victoria, Knox county, Ill., on the Galesburg & Great Eastern Railroad, the intended destination, the shipments were accepted and ultimately delivered to their intended destination, one over a reasonably direct route and the other over a circuitous route, over a portion of which no rate was on file with this Commission; *Held*, That complainant is entitled to reparation from the initial carrier on basis of a reasonable charge over a reasonably direct route.

Charles Conradis, *Arthur B. Hayes*, and *I. Wilson* for complainant.

John P. Gray and *W. F. McNaughton* for Washington, Idaho & Montana Railway Company; and *E. W. Soergel* for Chicago, Milwaukee & St. Paul Railway Company, Chicago Great Western Railroad Company, and others.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of lumber at Potlatch, Idaho. By complaint filed May 5, 1916, it alleges that the charges collected on two carloads of lumber shipped from Potlatch to Victoria, Ill., in July, 1914, and January, 1915, were unreasonable and illegal to the extent that they exceeded the charges that would have accrued at a rate of 54.09 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, weighing 58,000 pounds and 72,789 pounds, were delivered to the Washington, Idaho & Montana Railway at Potlatch, consigned to Victoria. The first was routed in the bill of lading "Mil. to Tfr. c/o C. G. W. c/o. C. P. & S. L.," the second, "C. M. & St. P. c/o M. St. L. at Minn. Trfr. c/o C. P. & St. L." At the time of movement and at present there was and is only one station

in Illinois known as Victoria, a point in Knox county on the Galesburg & Great Eastern Railroad, which was the intended destination. Victoria, on the Chicago, Peoria & St. Louis Railroad, the delivering carrier specified in the bill of lading, had been abandoned several years prior to the movements, although it was carried in transcontinental freight bureau eastbound special tariff at the time the shipments moved and remained therein until May 22, 1915. Charges were prepaid on the shipments, based on a rate of 55.5 cents, shown in the above tariff.

It appears that while the first shipment was in its possession the Chicago Great Western Railroad, without instructions from the shipper, changed the name of the delivering line to Galesburg & Great Eastern, and that shipment was moved to destination over the Chicago, Burlington & Quincy Railroad and the Galesburg & Great Eastern. The second shipment, upon arrival at Peoria, Ill., was refused by the Chicago, Peoria & St. Louis account no station named Victoria on its line. Upon direction of complainant the agent of the initial carrier advised the Minneapolis & St. Louis to forward the car to Victoria regardless of the routing specified, whereupon it was moved to its proper destination in Knox County. An indirect or back-haul movement necessitated in connection with this shipment resulted in charges of $43.66. The consignee paid these charges, together with additional charges, on the first shipment, $12.12, based on a rate of 2.09 cents, and on the second shipment, in the sum of $26.92, based on a rate of 3.7 cents, and was subsequently reimbursed therefor by complainant. According to a notice over the signature of the agent of the Galesburg & Great Eastern, which is of record, the latter charges were those of the Galesburg & Great Eastern, which moved the two shipments to Victoria from Wataga, Ill., its connection with the Chicago, Burlington & Quincy, a distance of 10 miles. The local rates of this carrier on lumber were not on file with this Commission, and therefore the defendants which participated in these movements did so without tariff authority.

For complainant it is asserted that the selling price of the lumber and the routing of the shipments were based upon the 55.5-cent rate and the route published in the above-mentioned tariff, which were erroneous and misleading and resulted in the damage sustained.

On behalf of defendants it is admitted that the tariff erroneously continued a rate to a station long after the station had been abandoned. Complainant's damage is acknowledged, but defendants are unable to agree as to which carrier or carriers should pay the reparation.

The initial carrier accepted the shipments for transportation under bills of lading impossible of execution. If it was willing to assume

the responsibility of forwarding the shipments under these circumstances, which it did, it should have sent them over a reasonably direct route to Victoria, Knox county, Ill., the only station named Victoria in that state. Its failure to pursue this course resulted in damage for which it is primarily responsible.

Inasmuch as there were no published rates applicable to the through transportation of lumber from Potlatch to Victoria, Knox county, Ill., it becomes necessary to determine what would have been reasonable charges. *Memphis Freight Bureau* v. *K. C. S. Ry. Co.*, 17 I. C. C., 90. At the time the shipments moved the joint rate from Potlatch to Wataga was 52 cents. The rate on lumber shown of record from Wataga to Victoria which applied to the first shipment was 2.09 cents, and that applicable to the second shipment was 3.7 cents. On the basis of these rates charges on these shipments would have amounted to $313.72 and $405.38, respectively, or a total of $719.10, which charge we find would have been reasonable. We further find that complainant made the shipments as described; that it paid and bore the charges thereon; and that it has been damaged and is entitled to reparation from the Washington, Idaho & Montana Railway Company in the sum of $89.43, with interest.

An order will be entered accordingly.

No. 8322.

G. L. CARRIERE
v.
ANGELINA & NECHES RIVER RAILROAD COMPANY ET AL.

Submitted January 20, 1916. Decided May 9, 1918.

Defendants' joint rate of 38 cents per 100 pounds on staves and other forest products in carloads from Etoile, Tex., and other points on the Angelina & Neches River Railroad, to New Orleans, La., found to have been unlawful and unreasonable to the extent that it exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Lufkin, Tex. Reparation awarded.

L. Palmer for complainant.

J. H. Alderman for Angelina & Neches River Railroad Company.

Gentry Waldo for Houston East & West Texas Railway Company, and Texas & New Orleans Railroad Company.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company, and Louisiana Western Railroad Company.

Baker, Botts, Parker & Garwood; Denegre, Leovy & Chaffe; and *Fred H. Wood* for Houston East & West Texas Railway Company, Texas & New Orleans Railroad Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

Complainant is engaged in the lumber business at New Orleans, La. By complaint, filed September 13, 1915, he alleges that the domestic and export rate of 38 cents per 100 pounds charged by defendants on staves and other forest products, in carloads, from Etoile, Clements, Prosser, McCoy, Alco, Ewing, Naclina, La Cerda, New Camp, and Chireno, Tex., to New Orleans was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 12½ cents; also, that the rate assailed exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Lufkin, Tex. Reparation is asked on four carloads of staves shipped from Etoile in July and August, 1915, and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The points of origin are situated on the Angelina & Neches River Railroad, a tap line extending from Keltys, Tex., to Chireno, a distance of about 30 miles, and intersecting the Houston, East & West Texas Railway at Lufkin. The shipments from Etoile are said to have moved over the tap line to Lufkin, the Houston, East & West Texas Railway to Houston, Tex., and the Texas & New Orleans and the Louisiana Western railroads and the line of Morgan's Louisiana & Texas Railroad & Steamship Company beyond. The distance from Lufkin to New Orleans over this route is 479 miles; over defendants' lines through Nacogdoches and Beaumont, Tex., 60 miles less. Charges aggregating $837.90 were collected, based on a weight of 220,500 pounds and the joint class D rate of 38 cents, governed by the western classification. This rate also applied to New Orleans from the other points of origin. After the hearing, and effective February 7, 1916, the application of the class D rates to staves and lumber in carloads from and to the points mentioned was canceled, so that there is no joint through rate now in effect. Class D rates, applicable to interstate traffic, applied and apply from the points of origin to Lufkin. Prior to the hearing these rates ranged from 5 cents to 8 cents, the rate from Etoile being 6 cents. On November 1, 1916, these rates were increased from 6 cents to 10 cents, a rate of 9 cents applying from Etoile. A commodity rate of 12½ cents applied and applies on lumber and staves from Lufkin to New Orleans. At the time these shipments moved, therefore, the combination from Etoile was 18½ cents. The discrepancy between the former joint rate and the aggregates of the contemporaneous intermediate rates was not protected by a fourth section application.

To support his contention for the application of the 12½-cent rate from Lufkin to New Orleans, complainant shows that it is a blanket rate applicable from various other approximately equidistant points in Texas on the Houston, East & West Texas and the Texas & New Orleans Railroad, and cites *Ladd & Co.* v. *Gould Southwestern Ry. Co.*, 36 I. C. C., 179, in which we prescribed rates on lumber to interstate points from Furth, Ark., on the Gould Southwestern Railway, 13 miles west of Gould, Ark., its junction with the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, no higher than those from Gould. In that case blanket rates applied in connection with the Iron Mountain from points on various short lines other than the Gould Southwestern, while in the instant case it appears that all the lines over which the 12½-cent rate applies are parts of the Southern Pacific system.

While, as complainant indicates, the haul to New Orleans would be about 39 miles less through McCoy, Tex., at which point the tap line intersects the Texas & New Orleans, than through Nacogdoches

and Beaumont, there is no switch connection between those lines, and no question concerning such a connection is presented in this case.

Complainant also cites a blanket export rate of 8¾ cents to Galveston, Tex., from Lufkin and various points on the Houston, East & West Texas, also from McCoy and various other points on the Texas & New Orleans and on the tap line, including Etoile, and contends that the application from points on the latter line to New Orleans of a rate in excess of 12½ cents discriminates against traffic to New Orleans. The 8¾-cent rate to Galveston covers a haul of 196 miles from Etoile, while the short-line distance from that point to New Orleans is 438 miles. This is the only basis of comparison afforded by the record, and it falls far short of sustaining the contention. Indeed, at the hearing complainant's witness conceded that New Orleans could stand a rate of 14 cents.

Based on the short-line distance of 419 miles, the rate from Lufkin to New Orleans yields a ton-mile revenue of 5.9 mills, and on the basis of 55,000 pounds, the approximate average loading of complainant's shipments, a car-mile revenue of approximately 16 cents. Considering that the prescribed minima are but 30,000 and 34,000 pounds, according to the equipment used, these revenues are not so high as to justify the compulsory extension of the rate to originating points on the tap line; and while, with respect to the present increased combination rates, which defendants have not had an opportunity to justify, the tap line's factors for the relatively short hauls to the junction appear to be at least disproportionate, there are no adequate data in the record upon which to fix specific lower through rates, and no affirmative finding can be made.

We find that the rate assailed is not shown to have been unjustly discriminatory or unduly prejudicial, but that it was unreasonable and unlawful to the extent that it exceeded the aggregates of the intermediate rates contemporaneously in effect. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he was damaged to the extent that the charges paid exceeded those that would have accrued at the contemporaneous combination rate of 18½ cents per 100 pounds; and that he is entitled to reparation in the sum of $429.97, with interest. An order awarding reparation will be entered, but the record affords no basis for an order for the future.

No. 9268.

ASH PRODUCTS COMPANY

v.

VANDALIA RAILROAD COMPANY ET AL.

Submitted May 11, 1917. Decided May 17, 1918.

Rate on wooden tent pins, in carloads, from Terre Haute, Ind., to St. Louis, Mo., found to have been and to be unreasonable. Reparation awarded.

H. D. Tumbleson for complainant.

C. B. Sudborough for Vandalia Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is Harry B. Marsh, engaged in the manufacture and sale of wooden tent pins and other lumber products at Indianapolis, Ind., under the name of the Ash Products Company. By complaint, filed October 6, 1916, as amended, he alleges that the rate applied by defendants on ten carloads of wooden tent pins shipped from Terre Haute, Ind., to St. Louis, Mo., six between March 23 and May 13, 1914, and four during 1916, was and is unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of a reasonable rate for the future. Claim covering the first six shipments was presented to the Commission informally March 13, 1916. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines. The fifth-class rates, governed by the official classification, of 11½ cents, minimum 34,000 pounds, when the first six shipments moved, and 12.1 cents, minimum 36,000 pounds, when the remainder moved, were legally applicable. The record is not clear as to the exact basis upon which charges were collected. It was testified that upon nine of the shipments a rate of 11½ cents was applied, and upon one, moving in 1916, a rate of 9½ cents. Apparently there are outstanding undercharges. Contemporaneously the sixth-class rate, minimum 34,000 pounds, applied, and still applies, on lumber of the kind from which the tent pins were made, viz, oak, beech, and maple, in carloads. When the first six shipments moved, the sixth-class rate was 9 cents. Prior to the movement of the remainder it was increased to 9½ cents. On September 20, 1917, the sixth-class rate was increased to 12 cents and

the fifth-class rate to 15 cents following *The Fifteen Per Cent Case*, 45 I. C. C., 303. Complainant contends that the rate on tent pins should not exceed the rate contemporaneously applicable on lumber.

The tent pins were made from waste pieces of lumber purchased from manufacturers of automobile bow tops. These pieces, cut in lengths of 16 inches and 24 inches, were run through a molder, which cut them to dimensions 1 inch by 1½ inches, are notched in the top, and one end was pointed. The pins were packed for shipment in wire-bound boxes containing 250 pins of either length. The risk of damage is slight. Complainant ships four or five carloads a year to St. Louis, between 35,000 pounds and 40,000 pounds being loaded in a car. The selling price of an average carload of 16-inch pins, consisting of 50,000 pins, approximating 8,000 feet, is $525, and of an average carload of 24-inch pins, consisting of 32,000 pins, approximating 8,500 feet, $408.96, delivered at St. Louis. An average carload of rough oak lumber, consisting of about 10,000 feet, is worth $45 per 1,000 feet, or $450, exclusive of freight. It was testified that first-class hardwood lumber is frequently valued at $100 per 1,000 feet.

In *Miller Manufacturing Co., Inc.*, v. *B. & O. R. R. Co.*, Docket No. 7478, unreported, decided July 3, 1915, relied upon by complainant, we found rates on wooden tent pins, in carloads, from Hicksville, Ohio, to Chicago, Ill., St. Louis, and Mississippi River crossings unreasonable to the extent that they exceeded the sixth-class rates contemporaneously applicable on lumber, in carloads, from and to the same points, and awarded reparation. Those pins, which were shipped in crates or tied in bundles, were larger but cheaper than complainant's product, and varied in length from 1 foot to 5 feet and in value from about $2 per 1,000 feet to $50 per 1,000 feet. No evidence was introduced for defendants. Counsel for the Vandalia Railroad Company argues that because of the difference in size, process of manufacture, and value between complainant's pin and the pin concerned in the case cited, a higher basis of rates is justified on the former. With this contention we do not agree. Action upon an application by complainant for the establishment of the sixth-class rate on tent pins has been deferred by defendants pending our decision in *In the Matter of Rates on and Classification of Lumber and Lumber Products*, Docket No. 8131.

We find that the rate assailed was, is, and for the future will be unreasonable to the extent that it exceeded or may exceed the rate contemporaneously in effect from Terre Haute to St. Louis on lumber, in carloads. This finding is subject to modification if a different conclusion is reached in *In the Matter of Rates on and Classification of Lumber and Lumber Products, supra*. No substantial evidence in

support of the allegations of unjust discrimination and undue prejudice was adduced. We further find that complainant made the shipments as described and paid and bore charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate contemporaneously applicable on oak, beech, and maple lumber, in carloads, subject to a minimum weight of 34,000 pounds when the first six shipments moved and 36,000 pounds subsequently, and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed, the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, amount of charges and date collected, rates found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of any outstanding undercharges may be waived down to the basis herein found reasonable.

An appropriate order will be entered.

No. 9060.

EMANUEL METZGER

v.

NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted March 15, 1917. Decided May 22, 1918.

Charges assessed on six carloads of crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, found to have been unreasonable. Reasonable maximum rate prescribed for the future and reparation awarded.

Martin S. Decker for complainant.

H. D. Palmer and *M. B.* and *H. H. Johnston* for New York, Chicago & St. Louis Railroad Company.

George A. Ellis for Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, and others.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

Complainant is engaged in the purchase and manufacture of flake naphthalene at Kingston, N. Y., and Lorain, Ohio, under the name of Nitrated Chemicals Company. By complaint filed July 17, 1916, as amended, he alleges that the rate of 82.8 cents per 100 pounds charged by defendants on six carloads of coal-tar waste, or crude naphthalene, shipped from Denver, Colo., to Lorain and Cleveland, Ohio, during January, February, March, and May, 1916, was unreasonable and unduly prejudicial as compared with the lower rates maintained from Chicago, Ill., St. Louis, Mo., and southern points to points in the middle west and in the eastern states, and particularly in comparison with a rate of 31.5 cents from Birmingham, Ala., to Kingston. Reparation is asked and the establishment of a rate for the future not in excess of 31.5 cents. Rates are stated in cents per 100 pounds.

The shipments moved over defendants' lines through Chicago, and charges were ultimately collected thereon on the basis of a combination fifth-class rate of 82.8 cents, composed of 67 cents to Chicago and 15.8 cents beyond. The commodity shipped consisted of so-called crude naphthalene, a coal-tar waste from which, apparently, the creosote oil had been extracted. It was barreled at point of origin in a liquid condition, but, upon cooling, solidified. Small pockets of oil

formed in places and small quantities accumulated at the bottoms of the barrels. Complainant purchased the crude naphthalene for about $17.50 per ton at Denver, to be used in the manufacture of flake naphthalene, a pulverized and compressed form of which is the commercial moth ball. The flake is obtained from liquefied crude naphthalene through a process of "whizzing," the oils being thrown out by centrifugal force, followed by the distillation of the residue into pure white crystals or flakes. Flake naphthalene is also used in the manufacture of dye materials and high explosives. Formerly selling for about 2.25 cents or 2.5 cents per pound, its price lately has ranged from about 5 cents to 14 or 15 cents per pound. The fifth-class rate assessed was restricted, both in the western and other classifications, which governed, to "naphthalene, ball, crystal or flake," and therefore was not applicable on the crude naphthalene shipped. No other specific rating or rate was provided. In consequence, and since the record does not satisfactorily establish the analogy contemplated by the "analogous article" rule of the official classification, it becomes necessary to determine what would have been a reasonable charge for the through transportation service rendered. *Memphis Freight Bureau* v. *K. C. S. Ry. Co.*, 17 I. C. C., 90.

On July 1, 1916, after the shipments moved, the following commodity rates from Denver were established on naphthalene, crude, dry, in crystals, in carloads, minimum 40,000 pounds: 40 cents to St. Louis, Mo.; 42.5 cents to Peoria, Ill.; and 45 cents to Chicago. According to complainant's uncontradicted evidence, as we understand it, this description covers a crude naphthalene which has been "whizzed," but subjected to no further treatment or sublimation. If this is correct, no rates have yet been established on the commodity in question from and to the points named. On the other hand, on June 1, 1917, a carload rating of sixth class, minimum 40,000 pounds, was established in official classification territory on naphthalene, crude, in bags or barrels. On that basis, if it were applicable for the entire movement, the present through rate on crude naphthalene, in carloads, from Denver to Cleveland and Lorain, over the routes of movement through Chicago, would be 57.6 cents, based 45 cents to Chicago and 12.6 cents beyond. The rate of 82.8 cents charged from Denver to Lorain, about 1,340 miles by the shortest route of movement, earned about 12.3 mills per ton-mile, while at a through rate of 57.6 cents the ton-mile revenue would be about 8.6 mills and the car-mile revenue, on the basis of the prescribed uniform minimum, which is satisfactory to complainant, slightly under 17.2 cents.

Complainant cites a rate of 31.5 cents on crude naphthalene, dry, in crystals, in bulk or bags, in carloads, minimum 36,000 pounds, and a corresponding rate of 66 cents on flake naphthalene, from Birming-

ham to Philadelphia, Pa., and Kingston; rates of 30 cents and 35 cents on asphalt, asphalt petroleum and petroleum road oil from Denver to the Mississippi River and Chicago, respectively, and the following rates from Denver on gas pitch and gas tar: To the Mississippi River, 30 cents; to Chicago, 35 cents; to Cleveland, 43.4 cents; and to Cincinnati, Ohio, 40.1 cents. Other rates to the east on similar low-grade traffic are also cited. But little evidence was adduced for defendants.

Complainant admitted that the output of the crude naphthalene at his source of supply at Denver is only about 7 tons per month, and considering in that light the above-indicated derivable revenue on this traffic, we are of opinion and find that a charge on the shipments in question at a rate of 57.6 cents per 100 pounds would have been reasonable, and that a rate on the commodity in question from and to the above points of origin and destination not in excess of that amount will be reasonable for the future. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 9318.

NATIONAL ASSOCIATION OF MACARONI & NOODLE MANUFACTURERS OF AMERICA

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted October 1, 1917. Decided May 22, 1918.

Rates on macaroni products, in carloads and less than carloads, between points in official, western, and southern classification territories, not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

H. G. Wilson for complainant.

Robert W. Fyfe, *D. P. Connell*, *R. Walton Moore*, and *Alex M. Bull* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a voluntary association of manufacturers of macaroni and noodle products. By complaint filed October 27, 1916, it alleges that defendants' fifth-class rates as applied to the transportation in carloads, and fourth-class rates in less than carloads, of macaroni, spaghetti, vermicelli, and noodles, between points in official, western, and southern classification territories, are unreasonable and unduly prejudicial. It asks reparation on behalf of certain named members of complainant's association on shipments moving within the statutory period, and the establishment of reasonable and nonprejudicial rates. Rates are stated in cents per 100 pounds.

The ingredients of the articles, hereinafter referred to as macaroni products, consist of semolina, or wheat reduced to granular form, and water, and to some a small quantity of egg is added. The process of manufacture is shaping the mixture to the various forms and extraction of the moisture by artificial drying. The various products are sold largely in pasteboard cartons, retailing usually at 5 and 10 cents each.

Most of the semolina used in the manufacture of macaroni products is ground from durum wheat, a hard translucent grain which

differs from the American spring and winter sown wheat in its glutinous characteristics and yellowish color. It is also a hardier wheat than the native American product, and was introduced about 15 years ago from Europe. From forty to sixty million bushels of durum wheat are now grown in this country annually, principally in North Dakota, South Dakota, Minnesota, Montana, and Nebraska. Semolina of a medium degree of granulation is used exclusively in the manufacture of macaroni.

The complaint is based largely upon a comparison of the class rates as applied to these macaroni products with the commodity rates which apply on the products of grain embraced within the so-called cereal products list, including not only flour, corn meal, and other direct products of grain, but also the general range of cooked and uncooked breakfast foods, hereinafter referred to as cereal products, such as Grapenuts, hominy grits, and oatmeal, but excluding certain of the shredded and flaked goods of lighter loading and minimum weight, which move on the class rates.

Like macaroni products, cereal products are rated fifth class in carloads and fourth class in less than carloads in the official and western classifications, and fourth class in less than carloads in the southern classification, but in carloads in the southern classification they are rated sixth class. No complaint is made of this one exception to the uniformity in ratings in the three classifications of macaroni products and cereal products.

Cereal products are manufactured at comparatively few points in the United States, largely in the middle west and at Buffalo, N. Y., and the movement is to a great extent in carload lots. The commodity rates on cereal products, with which comparison is made, apply only on carload traffic, eastbound and southbound, the class rates applying westbound. Macaroni products, on the other hand, are manufactured at many of the larger points in different parts of the country, and are shipped principally in less-than-carload lots and in all directions. The prayer, nevertheless, is for a revision of the less-than-carload as well as of the carload rates, westbound as well as eastbound, and between all points.

It will thus be seen that the prayer is for more than an equalization of the rates on macaroni products and cereal products, and that complainant would not be satisfied by an order in alternative form under section 3 merely directing removal of any undue preference of cereal products that might be found to exist. The complaint, in other words, as stated by the complainants, is based primarily upon section 1, and the carload rates on cereal products are referred to principally as a basis of comparison.

Specifically the relief sought is the establishment of carload rates on macaroni products which shall be the same percentage of the fifth-class rates that the average of the carload commodity rates on cereal products in the various classification territories is of the fifth-class rates, and of less-than-carload rates which shall be the same percentage of the proposed carload commodity rates on macaroni products that the fourth-class rates are of the fifth-class rates. That is to say, if the fifth-class rate is 40 cents, and the carload commodity rate on cereal products 24 cents, or 60 per cent of the first-class rate, the carload rate on macaroni products should likewise be 60 per cent of the fifth-class rate; and if the fourth-class rate is 48 cents, or 120 per cent of the fifth-class rate, the less-than-carload commodity rate on macaroni products should be 120 per cent of the new carload commodity rate on macaroni products, or 28.8 cents, the resulting carload and less-than-carload commodity rates to be stated as a fixed percentage of the respective class rates.

Complainant asserts that similarity has been established between the two classes of traffic. Macaroni products and many of the breakfast foods embraced within the cereal products list are put up for sale in the same kind of containers and are packed alike for shipment, largely in fiberboard boxes; they are transported in the same general kinds of equipment and under identical conditions of transportation; they approximate each other in weight per cubic foot and value; and they do not greatly differ in the weight of carload shipments, considering the average loading of cereal products as a whole.

Complainant does not contend that macaroni products compete with cereal products on which the commodity basis has been established, except in the general sense that both are products of grain and used as human food; but it is urged that this degree of competition, together with the similarity of transportation characteristics, requires the establishment of a rate equality between the two classes of traffic.

Complainant compares the car-mile earnings on macaroni products with those on certain other articles, such as wheelbarrows, hay, auto tires, machinery, canned goods, sash, doors and blinds, plows, furniture, fresh meats, and other articles, as tending to show that, differences in transportation conditions considered, the rates on macaroni products are too high.

Defendants in official and western classification territories concede that from a strict transportation standpoint a higher rate is not warranted on macaroni products than on cereal products, but contend that considerations other than strict transportation similarity justify the application of commodity rates on cereal products with-

out unduly prejudicing macaroni products; and that the application of the carload commodity basis on the general range of cereal products is the result of a gradual extension of that basis from its original establishment on flour, first to other direct products of grain of approximately as heavy loading as flour, later to the uncooked breakfast foods, and finally to the cooked, due to a large measure of competition between the various products. This gradual growth, mainly for competitive reasons, of the cereal products list and the much greater tonnage of cereal products as a whole than of macaroni products as a whole, coupled with the fact that there is no real competition between cereal products and macaroni products, are said by the defendants to differentiate the situation with respect to the two classes of traffic.

Defendants also refer to the fact that numerous articles in the bakery goods line, of only slightly higher value and slightly less cubical weight than macaroni products, some of which consist, like macaroni products, of only flour and water, or flour and water and a little seasoning, are rated first and second class, in less than carloads, and fourth class, in carloads, by comparison with which they contend that the ratings on macaroni products can not be viewed as unreasonable. These bakery goods are put up for sale, like macaroni products, in 5 and 10 cent packages, and move under about the same conditions of transportation.

Defendants further point to the steady increase in the output and shipment of macaroni products, and to the testimony of perhaps the largest manufacturer of macaroni products in the United States, whose factory is located at Cleveland, Ohio, to the effect that plans have already been made for an increase in its annual output from 20,000,000 to 300,000,000 pounds, as tending to establish the prosperous state of the macaroni industry under the present ratings.

We can not subscribe to complainant's contention that the state of relativity between commodities which features the classification as the real foundation of its structure must necessarily extend to commodity rates. As a matter of fact the reason why a commodity rate is established is that conditions require a departure as to the particular article from this very plan of grouping together certain articles. Those exceptional conditions do not necessarily apply to all commodities; otherwise the class rate would give way entirely to the commodity rate. Nor is this idea of classification relationship necessarily to be followed as between carload and less-than-carload commodity rates on the same article. Conditions may demand a departure from the classification basis as to carload and not as to less-than-carload traffic, as apparently has been the case even with respect

to cereal products, which move on the class rates in less than carloads.

The rates cited in comparison by complainant do not warrant an order disturbing the present adjustment of rates on the commodities in question.

Upon all the facts of record we conclude and find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 9373.[1]

CLEVELAND PROVISION COMPANY
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted November 8, 1917. Decided May 17, 1918.

For the transportation of hogs, calves, sheep, lambs, and goats from primary markets defendants' tariffs should provide that if a double-deck car is ordered, and in lieu thereof two single-deck cars are furnished, they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of two days' exclusive of day of notice is allowed the carriers within which to furnish the car ordered.

John S. Burchmore, *A. Z. Baker*, and *C. B. Heinemann* for complainants.

R. D. Rynder for Swift & Company, intervener; and *S. H. Cowan* and *Graddy Cary* for National Live Stock Shippers' Protective League.

Ernest S. Ballard for central freight association lines and eastern trunk lines; *A. P. Humburg* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; *Robert H. Widdicombe* for Chicago & North Western Railway Company; *Charles Donnelly* and *B. W. Scandrett* for Northern Pacific Railway Company; *Fred G. Wright* for Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company,

[1] This report also embraces No. 9383, National Live Stock Exchange v. Alabama & Vicksburg Railway Company et al.

and receiver; *H. A. Scandrett* and *L. T. Wilcox* for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon & Washington Railroad & Navigation Company; *J. B. Coffey* for Atchison, Topeka & Santa Fe Railway Company; and *W. F. Dickinson* and *J. C. Gutsch* for Chicago, Rock Island & Pacific Railway Company, Chicago, Rock Island & Gulf Railway Company, and receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

These cases, which are related, were heard together and will be disposed of in one report.

The complainants are: In No. 9373, a corporation engaged in the meat-packing business at Cleveland, Ohio: and in No. 9383, an unincorporated voluntary association of live-stock exchanges and the members thereof, with its office at Chicago, Ill. By complaints filed December 13, 1916, they allege, in substance, that the defendants' tariffs are unreasonable in that they fail to provide, in connection with the transportation of hogs, calves, sheep, lambs, and goats, a so-called two for one rule, that is, when a double-deck car is ordered, and for the convenience of the carrier two single-deck cars are furnished in lieu thereof, the charges will be assessed upon basis of the rate and minimum weight fixed for the size of car ordered. Unjust discrimination and undue prejudice are also alleged in No. 9373. They pray for reasonable rules and regulations and in No. 9373 for reparation on all shipments that moved within two years prior to the filing of the complaint. Swift & Company, a corporation engaged in the meat-packing business at Chicago, intervened in behalf of complainant in No. 9383.

Defendants publish or participate in rates on hogs, calves, sheep, lambs, and goats in both double-deck and single-deck cars between various points in the United States. When small live stock is shipped in single-deck cars, the rates and minima are usually different from those applicable to shipments in double-deck cars. In central freight association and trunk line territories, with some few exceptions, the minima applicable are: On hogs, 22,000 pounds in double-deck cars and 17,000 pounds in single-deck cars; on calves, 21,000 pounds in double-deck cars and 17,000 pounds in single-deck cars; and on sheep, lambs, and goats, 18,000 pounds in double-deck cars and 14,000 pounds in single-deck cars. When calves or hogs are shipped in single-deck cars the rates are 15 per cent higher than when shipped in double-deck cars, and when sheep, lambs, and goats are shipped in single-deck cars the rates are 25 per cent higher than when shipped

in double-deck cars. There is no recognized percentage relationship in single and double deck rates in the other territories, but generally the single-deck rates are higher and the minima on the two classes of cars different.

A number of exhibits were filed by complainants comparing the charges on two single-deck cars with those on a double-deck car. It was shown that in central freight association territory the charges on calves, hogs, and sheep, in two single-deck cars, averaged $54.06, $51.10, and $50.41, respectively, higher than in double-deck cars; and that the charges on these animals in single-deck cars were 186.3, 177.8, and 194.6 per cent, respectively, of the double-deck car charges. No figures were offered to show the average weight shipped in either kind of car. Complainants testified that the minimum on a double-deck car was not greatly exceeded, and that it was impossible to load the double-deck minimum in a single-deck car.

Complainants state that in addition to the freight charges on two single-deck cars being higher than on a double-deck car, the switching charges on the former are double those on the latter, and that the cleaning and disinfecting charges are $5 for the former and only $4 for the latter. It was also shown that commission merchants charge $10 for handling a single-deck car and $15 for double-deck cars, but that if the railroads protect the double-deck rate and minimum on two single-deck cars, the commission merchants apply the double-deck commission charge to the two single-deck cars.

For the Cleveland Provision Company it was testified that its cost and selling prices are based on the double-deck freight charges; that it orders double-deck cars for all its shipments of small stock, the orders ranging from 2 to 25 cars; and that 40 per cent of its shipments move in double-deck cars and the balance in single-deck cars.

Some of the defendants publish a two for one rule on this traffic. In some instances these rules are restricted to particular kinds of stock or between certain points and usually contain a provision that definite notice to the carrier, from two to six days in advance of the date of shipment, shall be given by the shipper.

Complainants urge that defendants should be required to establish a two for one rule at the primary markets, without time limitation and at country stations not in excess of 24 hours' notice. They state that it is impracticable to give notice prior to the date of shipment from the primary markets, as stock is purchased in the morning and shipped out the same day to avoid shrinkage, yardage, and expense of feeding and watering. Also that packing houses are usually located at the primary markets; that those markets are constantly receiving shipments in double-deck cars; that only a small percentage of the stock is reshipped; and that therefore there is a supply of

double-deck cars constantly available at such points. Both defendants' and complainant's witnesses testified that the carriers endeavor to have a sufficient supply of double-deck cars on hand at such markets to move outbound stock.

Defendants show that only a small proportion of their respective live-stock equipment is double deck; that such cars can be used for practically nothing except small stock, while a number of coarse commodities are transported in single-deck cars; that the empty movement of both single-deck and double-deck cars is large, the empty haul of the double-deck car being much greater than that of single-deck cars, and in some territories equal to or greater than the loaded mileage; and that a large number of the country stations have no facilities for loading double-deck cars. They further urge that present rates on live stock are low; that the establishment of the rule asked would reduce their earnings per car one-half and result in rates less than the actual cost of the service; and that the rule would seriously deplete the supply of single-deck cars used to transport live stock and mixed shipments of large and small stock.

No substantial evidence was offered to support the allegation of unjust discrimination or undue prejudice.

Relying upon *United States* v. *Pennsylvania Railroad Co.*, 242 U. S., 208, some of the defendants contend that we have no authority to require the establishment of the rule asked. That case grew out of our order in *Pennsylvania Paraffine Works* v. *P. R. R. Co.*, 34 I. C. C., 179, requiring defendants to furnish, upon reasonable request and reasonable notice, at complainants' refineries tank cars in sufficient number to transport complainant's shipments in interstate commerce. The Supreme Court, affirming the decision of the lower court, held that the powers conferred on us by the act do not include the power to require carriers to provide and furnish tank cars, no question of discrimination being presented.

In several cases we have required the establishment of a two for one rule where carriers have provided double-deck rates and minima different from single-deck rates and minima, and in a number of cases have required the establishment of a two for one rule with respect to ordinary equipment. Such a rule has become almost universal in cases where carriers' tariffs provide varying minima according to the size of the car. Our decisions in those cases were upon the ground that the carriers, having provided rates dependent upon certain equipment used, held themselves out to furnish such equipment, thus conferring upon the shipper a legal right to demand that equipment and to have the charges assessed accordingly. A carrier is entitled

to a reasonable time to furnish equipment, but if before such time expires or thereafter it furnishes equipment different from that requested, then such equipment is furnished for its own convenience and the shipper should be saved harmless.

In *Swift & Co* v. *C., B. & Q. R. R. Co.*, 43 I. C. C., 56, we prescribed a two for one rule, with a provision that two days' notice, exclusive of the date of notice, should be given by the shipper at South Omaha, Nebr., one of the primary markets. From the facts of record it appears that two days is sufficient time to enable carriers to furnish equipment at the primary markets. We find that so long as these defendants have provisions in their tariffs for the use of double-deck cars, their tariffs should provide that when a double-deck car is ordered and, for the convenience of the carriers, two single-deck cars are furnished, the charges for the two single-deck cars should be at the rate and minimum weight for the double-deck car ordered, provided two days' notice has been given by the shipper of his desire to use a car of the size ordered. No evidence was offered by complainants with respect to any specific country stations, and the record discloses that it is the practice for country shippers to give notice ranging from several days to weeks prior to the date of shipment. The record fails to disclose any necessity for the rule at other than primary markets, nor does it afford a basis for reparation.

No order will be entered at this time. If the tariffs of the defendants are not brought into conformity with our conclusion herein within 60 days from the service of this report, the matter may be again brought to our attention for appropriate action.

No. 9522.

EDWARD E. RIECK COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Submitted July 23, 1917. Decided May 17, 1918.

Rates on certain less-than-carload shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, Pa., found not justified. Reparation awarded.

S. S. Robertson for complainant.
Edward T. Noble for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the milk business at Pittsburgh, Pa. By complaint filed December 30, 1916, it alleges that the rates charged by defendant for the transportation of numerous less-than-carload shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, between November, 1914, and June, 1915, inclusive, were unreasonable. Reparation is asked. The claim was presented to the Commission informally May 25, 1916. Rates are stated in cents per case.

The shipments consisted of so-called certified fresh milk, bottled and packed by the shipper in ice in tin-lined wooden boxes or cases, some of which contained 12 quart bottles and others 20 pint bottles. They moved in passenger trains over defendant's line, 5,508 cases during November and December, 1914, January and a part of February, 1915, upon which charges were collected at a distance rate of 27 cents, applicable on less-than-carload shipments in cases containing 12 quart or 24 pint bottles, under refrigeration; and 14,210 cases during the remainder of February, March, April, May, and June, upon which charges were collected at a distance rate of 22 cents, applicable to similar cases, not under refrigeration. Defendant's tariffs did not provide rates on cases containing 20 pint bottles, so that the charges assessed thereon were without tariff authority.

Prior to November 1, 1914, the rate on 12-quart or 24-pint cases not under refrigeration was, and for some time had been, 15 cents. On November 1, 1914, this rate was increased to 22 cents and on June

27, 1915, it was reduced to 18 cents and made specifically applicable to 20-pint cases. This rate is satisfactory to complainant. Two shipments a day were made into Pittsburgh, one on the first train in the morning, and one on the afternoon train. Between November 1, 1914, and early in February, 1915, the baggage-car service was withdrawn on the afternoon train, as a result of which the shipments on the latter train were carried in refrigerator cars and charges were collected on the basis of the 27-cent rate applicable to milk in 12-quart or 24-pint cases, under refrigeration. Those on the morning train continued to be made in baggage cars at the 22-cent rate. In February the baggage-car service was restored, since which time complainant's shipments have moved exclusively in baggage cars at the rates on milk not under refrigeration. The 27-cent rate was increased to that amount from 18 cents effective November 1, 1914, so that both that and the 22-cent rate represent rates increased since January 1, 1910, and the burden is upon defendant to justify them.

It was testified for complainant that when the baggage-car service on the afternoon passenger train was withdrawn defendant was given timely notice that refrigeration service in connection with complainant's shipments was neither necessary nor desired; and that a demand was made for service without refrigeration. Also that on Februrary 1, 1915, the Erie Railroad Company published a rate of 18 cents on milk not under refrigeration from Ravenna to Pittsburgh, and that defendant had agreed promptly to establish that rate over its line, but failed to do so until June 27, 1915. An inspection of the tariffs on file with the Commission fails to disclose the establishment by the Erie of the 18-cent rate cited, the tariff referred to by complainant providing rates on milk in cans. Repartion is asked on the shipments moving in November and December, 1914, January and part of February, 1915, on basis of the 22-cent rate contemporaneously applicable over defendant's line to milk not under refrigeration, and on the remaining shipments on basis of the 18-cent rate alleged to have been contemporaneously in effect over the Erie and subsequently established over the route of movement.

We find that the rates assailed have not been justified. In view of the fact that reparation is claimed to the basis of 22 cents on shipments moving under refrigeration and 18 cents on those not under refrigeration, and that defendant's admission of unreasonableness goes only to that extent, we find that reasonable rates on milk in cases containing 12-quart or 20-pint bottles would have been not in excess of 22 cents per case under refrigeration and 18 cents per case not under refrigeration. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rate of 27 cents per case under refrigeration and 22 cents per case

not under refrigeration; that it has been damaged to the extent of the difference between the rates charged and those herein found reasonable as maxima; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement as to each shipment upon which reparation is claimed, the date of shipment, car initials and number, points of origin and destination, route, commodity, number of cases, rate applied, amount of charges and date collected, rates found reasonable and legal and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding repartion.

No. 9382.[1]

GAMBLE ROBINSON FRUIT COMPANY
v.
FLORIDA EAST COAST RAILWAY COMPANY ET AL.

Submitted July 22, 1917. Decided May 17, 1918.

1. Rates legally applicable on grapefruit and oranges, in carloads, from Mims and Astatula, Fla., to Oelwein, Iowa, found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

L. A. Knudsen for complainant.

R. W. Goodell for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale fruit and produce business at Oelwein, Iowa. By complaints filed August 30, 1916, it alleges that the charges collected by defendants on two carloads of grapefruit shipped from Astatula and Mims, Fla., to Oelwein, November 11 and December 12, 1913, respectively, were unreasonable and in violation of the long-and-short-haul rule of the fourth section to the extent that they exceeded the rates to Minneapolis, Minn. Reparation is asked. The claims were presented to the Commission informally January 27 and April 5, 1915.

The shipment from Mims consisted of 325 boxes of grapefruit and weighed 28,000 pounds. It moved over the Florida East Coast Railway, the Atlantic Coast Line and the Louisville & Nashville railroads to Evansville, Ind.; Cleveland, Cincinnati, Chicago & St. Louis Railway to Gibson, Ind.; Indiana Harbor Belt Railroad to Bellewood, Ill.; and Chicago Great Western Railroad beyond. The Indiana Harbor Belt is not a party defendant. Charges were collected in the sum of $302.25. The rate legally applicable was a combination rate composed of 15 cents per box to Jacksonville, Fla., 55 cents per box to Dubuque, Iowa, and 14.7 cents per 100 pounds beyond, so that the shipment was overcharged $33.59. The shipment from Astatula consisted of 300 boxes of oranges and weighed 26,000

[1] This report also embraces No. 9382 (Sub-No. 1), Same v. Tavares & Gulf Railroad et al., and Portions of Fourth Section Applications Nos. 703, 1952, 1548, 1573, and 3965.

pounds. It moved over the Tavares & Gulf Railroad, the Seaboard Air Line, the Southern, and the Cincinnati, New Orleans & Texas Pacific railways to Cincinnati, Ohio, and Cleveland, Cincinnati, Chicago & St. Louis and Chicago Great Western beyond. Charges were collected in the sum of $276.60. The rates legally applicable were a joint rate of 70 cents per box to Dubuque and 14.7 cents per 100 pounds beyond, so that this shipment was overcharged $28.38.

There was contemporaneously in effect a combination rate of 81 cents per box from Mims to Minneapolis, composed of 15 cents to Jacksonville and 66 cents beyond, and a joint commodity rate of 81 cents per box from Astatula to Minneapolis. Oelwein is about 190 miles south of and directly intermediate to Minneapolis from the points of origin by way of the Chicago Great Western. Since April 8, 1915, defendants have maintained rates on citrus fruits to Oelwein the same as to Minneapolis. No evidence was offered in justification of the former fourth section departures which were protected by appropriate fourth section applications heard with this case. The relief therein asked will be denied. On March 17, 1917, the component from Mims to Jacksonville was increased to 20 cents per box, thus increasing the rates to both Minneapolis and Oelwein to 86 cents per box. The Minneapolis and Oelwein rates are not made applicable to all intermediate points, but defendants' tariff publishing these rates provides, conformably to rule 77 of Tariff Circular 18-A, for the publication, upon reasonable request therefor, of rates to any intermediate point not exceeding those to more distant points. This is a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co.* v. *C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602.

At the time the shipments moved defendants maintained the same rates to Minneapolis and Oelwein on citrus fruits from the Ohio River crossings; on deciduous fruits from points in California; and on watermelons from points in Florida.

In *Florida Fruit & Vegetable Asso.* v. *A. C. L. R. R. Co.*, 17 I. C. C., 552, we prescribed a proportional rate of 66 cents per box on citrus fruits from base points in northern Florida, including Jacksonville, to Minneapolis, and suggested that the carriers should establish rates to other points east of the Missouri and north of the Ohio rivers in accord with the rates prescribed to Minneapolis and other points in that territory.

We find that the rate applicable on the shipment from Mims was unreasonable to the extent that the components from Jacksonville to Oelwein exceeded 66 cents per box, and that the rate applicable on the shipment from Astatula was unreasonable to the extent that

it exceeded 81 cents per box. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, on the shipment from Mims in the sum of $39, with interest, from the Florida East Coast Railway Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Chicago Great Western Railroad Company; and on the shipment from Astatula in the sum of $33.60, with interest, from the Tavares & Gulf Railroad, Seaboard Air Line Railway Company, Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Chicago Great Western Railroad Company, which amounts include the overcharges mentioned. The Indiana Harbor Belt Railroad Company may join in making reparation on the shipment from Mims.

Orders awarding reparation and denying fourth section relief will be entered, but as the bases of rates herein found reasonable have been in effect for more than two years no order for their future maintenance will be entered.

No. 9622.

WEST VIRGINIA RAIL COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted September 20, 1917. Decided May 17, 1918.

Rate on iron and steel rails, in carloads, from Sparrows Point, Md., to Huntington, W. Va., found justified. Complaint dismissed.

W. P. Tingley and *Willis H. Fowle* for complainant.

J. S. Patterson, *William Ainsworth Parker*, and *Charles R. Webber* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and sale of light steel rails at Huntington, W. Va. By complaint filed April 9, 1917, as amended, it alleges that defendants' rate of $3.66 per long ton on new iron and steel rails, including culls and seconds, in carloads, from Sparrows Point, Md., to Huntington was and is unreasonable to the extent that it exceeded and exceeds $3.02 per long ton; also unjustly discriminatory and unduly prejudicial to complainant and Huntington to the extent that it exceeded and exceeds the rates from Sparrows Point to Newark and Lorain, Ohio, and further to the extent that it exceeded and exceeds the rate from Sparrows Point to Pittsburgh, Pa., by more than 40 cents per long ton. Reparation is asked and the establishment of a reasonable rate for the future. No evidence of discrimination under section 2 was adduced. Evidence submitted to show undue preference of manufacturers of light steel rails at Cumberland, Md., and Williamsport, Pa., properly was objected to by defendants upon the ground that that issue was not raised by the complaint. Rates are stated in amounts per long ton.

Culls and seconds are new standard sized rails which have been rejected on account of some defect. Complainant's only sources of supply for culls and seconds are the plants of the Bethlehem Steel Company at Sparrows Point and South Bethlehem, Pa. From these culls and seconds, and also from scrap rails purchased from railroads, complainant, by a rerolling process, manufactures light rails, which are used for the construction of tracks for mines, logging roads, manufacturing plants, etc.

Sparrows Point, which is located about 11 miles from Baltimore, Md., and takes the Baltimore rates, is a local station on the Baltimore & Sparrows Point Railroad, a Pennsylvania system line about 5 miles long. This road connects with the Pennsylvania and Baltimore & Ohio railroads at Colgate Creek, Md., and all routes hereinafter named will be understood to include the Baltimore & Sparrows Point to Colgate Creek. There are two available routes to Huntington, one over the Baltimore & Ohio all the way and the other by way of the Pennsylvania, Washington, D. C., and Chesapeake & Ohio Railway. The Baltimore & Ohio also serves Newark, Lorain, and Pittsburgh, while the Pennsylvania serves Pittsburgh and, in connection with its affiliated lines, Newark.

Complainant contends that any rate in excess of $3.02 is inherently unreasonable. Its basis for this figure is the eastbound rate from Newark to Sparrows Point by way of the Baltimore & Ohio, and the rate from Sparrows Point to Pittsburgh, $2.42, plus a differential of 60 cents, to which differential, it alleges, the carriers have conceded Huntington to be entitled on eastbound traffic. It is also contended that a rate to Huntington based on a differential of 40 cents over the rate to Pittsburgh would be relatively reasonable. The eastbound rates are constructed on a different basis from the westbound rates and a comparison between the two is not conclusive. Nor is there a substantial showing that the rate on steel rails from Sparrows Point to Huntington should bear any fixed relation to the rate on steel rails from Sparrows Point to Pittsburgh.

Complainant submits the following comparative statement of rates on steel rails, in carloads, from Sparrows Point to various points in central freight association territory, together with the ton-mile earnings thereunder:

To—	Short-line distance.	Route.	Rate.	Earnings per long ton-mile.
	Miles.			*Mills.*
Huntington	488	P. R. R., Washington; C. & O	$3.66	7.50
Do	514	B. & O	3.66	7.12
Newark	479	do	3.02	6.30
Lorain	494	B. & O., Pittsburgh; P. & L. E., Youngstown; Erie R. R., Cleveland; N. Y. C. & St. L.	2.88	5.83
Cleveland, Ohio	468	B. & O., Pittsburgh; P. & L. E., Youngstown; Erie R. R.	2.88	6.15
Sandusky, Ohio	528	B. & O., Pittsburgh; P. & L. E., Youngstown; Erie R. R., Cleveland; L. S. & M. S.	3.22	6.09
Toledo, Ohio	582	B. & O., Pittsburgh; W. P. T., Pittsburgh Junction; W. & L. E.	3.22	5.53
Columbus, Ohio	512	B. & O	3.22	6.29
Zanesville, Ohio	464	do	3.02	6.50
Springfield, Ohio	557	B. & O., Columbus; C., C., C. & St. L	3.46	6.21
Celina, Ohio	645	do	3.58	5.55
Canton, Ohio	438	B. & O., Pittsburgh; P. Co	2.88	6.57
Youngstown, Ohio	402	B. & O., Pittsburgh; P. & L. E	2.68	6.66
Buffalo, N. Y	406	P. R. R	2.10	5.17
Pittsburgh	337	B. & O	2.42	7.18
Dayton, Ohio	582	B. & O., Columbus; C., C., C. & St. L	3.52	6.05
Findlay, Ohio	592	B. & O., Fostoria; L. E. & W	3.32	5.61
Wellington, Ohio	495	B. & O., Pittsburgh; W. P. T., Pittsburgh Junction; W. & L. E.	3.12	6.30
Cincinnati, Ohio	588	B. & O	3.66	6.22
Cambridge, Ohio	437	do	2.40	5.50
Wheeling, W. Va	388	do	2.42	6.24

The Baltimore & Ohio explained that the $3.02 rate to Newark, above shown, has been maintained in error and should have been $3.12, the same as in effect by way of the Pennsylvania. On November 1, 1917, it was increased to $3.12.

The official classification rates iron and steel rails, in carloads, sixth class, but the carriers have established commodity rates which, as a rule, are materially lower than the class rates. The rate assailed represents an increase of 5 per cent made in February, 1915, following *The Five Per Cent Case*, 32 I. C. C., 325, so that the burden of justifying it is upon defendants.

It does not appear that complainant meets any competition at Lorain, either in the purchase of culls and seconds or in the sale of light steel rails. There is a manufacturer of light steel rails at Newark with whom complainant competes in the sale of its product, but it was not shown that this mill ever purchased rails at Sparrows Point. Defendants testified that the Newark mill never purchased rails at Sparrows Point and in fact uses only scrap rails in the manufacture of light steel rails. While it was testified that there are manufacturers of light steel rails at Pittsburgh rate points, there is no evidence that they compete with complainant either in the sale of their products or in the purchase of culls and seconds at Sparrows Point.

Complainant submitted further comparisons of the rate attacked and the ton-mile earnings thereunder with the rates and generally lower ton-mile earnings from Cumberland, South Bethlehem, and Pittsburgh to the destinations shown in the above statement; with the rates from Pittsburgh to other central freight association points and to eastern points; and with the rates from certain rail-producing points to Cleveland; and argues that, distance considered, the rate attacked is relatively too high. But distance is not the only element to be considered, and the comparisons are not otherwise helpful. The destinations to which the westbound rates apply are grouped, and we have repeatedly held that where a comparison with a group rate is made the average distance from the point of origin to the various points in the group should be taken.

Defendants take the position that the rates on rails from Sparrows Point to central freight association points generally are constructed in accordance with the New York-Chicago percentage scale, explained in *Saginaw Board of Trade* v. *Grand Trunk Ry. Co.*, 17 I. C. C., 128; that the propriety of the rate attacked must be determined by the relationship of its group to the other percentage groups, and by its situation within such group; that complainant has not attempted to show that the 87 per cent group in which Huntington has been placed since 1885, is improperly constructed, or that it is not properly

related to the other groups in percentage territory; and that a change in the Huntington rate will not only disrupt the 87 per cent group but will affect other groups as well. The assistant freight traffic manager of the Pennsylvania testified that the $3.66 rate was constructed by taking 87 per cent of an assumed New York-Chicago rate of $4.90, there being no published rate on rails from New York to Chicago, because there is no production of rails at New York, and deducting the differential of 3 cents per 100 pounds, or 60 cents per net or long ton, accorded Baltimore under New York. Complainant insists that the New York-Chicago percentage system is not observed in constructing rates to central freight association points, but an examination of the rates cited shows that, with very few exceptions, the westbound rates are so constructed. Lorain is a lake port, and, although in the 76 per cent group, is accorded the same rate as Cleveland, a 71 per cent point. On westbound traffic the boundaries of the 87 per cent group, roughly described, extend from Charleston, W. Va., northward to within a few miles of Parkersburg, W. Va., thence in a meandering line to a point about 35 miles beyond Dayton, Ohio, thence southward to a point a few miles west of Cincinnati, and thence southeasterly to Charleston. Huntington is near the eastern end and hence the ton-mile earnings are higher than the average for the group. The ton-mile earnings to Cincinnati, which is near the western end of the group, are considerably lower.

On iron and steel articles, including rails, eastbound, Huntington, Ironton, Ohio, Ashland, Ky., and other iron-producing points normally taking 87 per cent of the Chicago-New York rates, have been transferred to the 77 per cent group, with Columbus, for the reason, as explained of record in *Eastern Export Iron and Steel Case*, 43 I. C. C., 5, that the present distances by way of the direct lines justified that percentage. The Baltimore & Ohio and Pennsylvania urged that in no event should the rate from Sparrows Point to Huntington be reduced below the Columbus basis westbound, that is, 78 per cent, or $3.22, but they refused to concede that the present rate is unreasonable. There was introduced in evidence a letter, dated April 12, 1917, from the Baltimore & Ohio to complainant, stating that a proposition to reduce the rate on rails from Sparrows Point to Huntington to $3.18 had been submitted to the special committee on new iron and steel rails, representing the principal lines operating between central freight association and trunk line territories.

In *West Virginia Rail Co.* v. *C. & O. Ry. Co.*, 50 I. C. C., 110, complainant attacked the export and domestic rates on steel rails from Huntington to New York, Philadelphia, Pa., and Baltimore, and asked us to prescribe for the future rates from Huntington

that would not exceed the rates from Pittsburgh by more than 40 cents. The domestic rate from Huntington to New York was $3.84, and to Baltimore $3.54. The usual port differentials of 40 cents and 60 cents per ton, respectively, accorded Philadelphia and Baltimore under New York have been split on iron and steel rates eastbound. The carriers voluntarily proposed to establish rates from Huntington to the Atlantic seaboard 60 cents higher than the rates contemporaneously maintained from Pittsburgh to the same ports, making the rate to New York $3.36 and to Baltimore $3.06 on both export and domestic traffic, the specific export rates having been withdrawn under our permission accorded in the *Eastern Export Iron and Steel Case, supra.* We found that the domestic rates from Huntington to the ports were unreasonable to the extent that they exceeded 77-60ths of the contemporaneous domestic rates from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, respectively, under the rate to New York, i. e., $3.54, $3.34, and $3.24. This adjustment results in a spread of 78 cents between the rates from Pittsburgh and Huntington to Baltimore.

While it may be that on westbound traffic Huntington should be placed in a lower rated group, the record in this case is not sufficient for the determination of that question. By a complaint recently filed, Docket No. 9926, the 87 per cent adjustment on classes and commodities, including iron and steel rails, between Huntington and points in trunk line and New England territories is assailed, and our findings herein are without prejudice to the conclusions that may be reached upon the record made in that case.

We find that the rate assailed has been justified. An order dismissing the complaint will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 1145.

CLASSIFICATION OF AUTOMOBILE BODIES.

Submitted January 25, 1918. Decided May 17, 1918.

1. Proposed increased rating in official classification, in so far as it would exceed three times first class, and proposed individual minimum weight, on passenger automobile bodies 36 inches or less in height, in less than carloads, found not justified.
2. Proposed increased rating of four times first class, subject to individual minimum weight of 1,000 pounds, on passenger automobile bodies exceeding 36 inches in height, in less than carloads, found justified.

William W. Collin, jr., for respondents.

R. P. Ellis for protestant.

J. S. Marvin for National Automobile Chamber of Commerce, intervener; and *Harry F. Masman* and *Beaumont, Smith & Harris* for Hayes Manufacturing Company and Hayes-Ionia Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

By item 7 on page 49 of supplement No. 15 to official classification I. C. C. No. 44, filed to take effect October 1, 1917, respondents proposed certain changes in description of and increased less-than-carload ratings on finished and unfinished bodies for passenger automobiles, together with a less-than-carload minimum weight for each body. Upon protest of the F. A. Ames Company, of Owensboro, Ky., this item was suspended until July 29, 1918. Various shippers of passenger automobile bodies intervened to resist any increase in the present ratings.

The present and proposed ratings are as follows:

Present ratings.			Proposed ratings.		
	L. C. L.	C. L.		L. C. L.	C. L.
Automobile tonneaus:			Automobile bodies:		
Finished, detachable parts removed and packed together or nested:			Passenger:		
Crated or boxed	3t1	.....	Finished:		
Min. wt. 10,000 lbs. subject to rule 27	.....	1	[1] In boxes or crates, actual weight, but not less than 1,000 lbs. each	4t1	.....
Unfinished (primed but not varnished), detachable parts removed and packed together or nested:			Loose or in packages, c. l., min. wt. 10,000 lbs. (sub. to rule 27)	.....	1
Not crated or boxed	3t1	.....	Not finished:		
Crated or boxed	D1	.....	S. u. or partially k. d.:		
Min. wt. 10,000 lbs. (subject to rule 27)	.....	2	[1] Loose or on skids, actual weight, but not less than 1,000 lbs. each	4t1	.....
Bodies (for self-propelling passenger vehicles):			[1] In boxes or crates	4t1	.....
Finished, detachable parts removed and packed together or nested:			Loose or in packages, c. l., min. wt. 10,000 lbs. (subject to rule 27)	.....	2
Crated or boxed	3t1	.....	Completely k. d.:		
Min. wt. 10,000 lbs. (subject to rule 27)	.....	1	Parts not flat or nested:		
Unfinished (primed, but not varnished) detachable parts removed and packed together or nested:			[2] Loose or in packages	1½	.....
Not crated or boxed	3t1	.....	Parts flat or nested:		
Crated or boxed	D1	.....	[2] Loose or in packages	3	.....
Min. wt. 10,000 lbs. (subject to rule 27)	.....	2	[1 2] Loose or in packages, c. l., min. wt. 30,000 lbs	.....	5

[1] Denoted increase. [2] Denoted decrease.

The foregoing ratings cover the so-called touring and roadster car bodies, which are of the open or folding-top type, as well as limousine, coupe, sedan, and other closed car bodies. The testimony in justification of the proposed increases was confined largely to the closed bodies, while protestants' testimony related principally to the open or folding-top type.

Respondents testify that at the time the present ratings were established practically the only bodies shipped were of the open or folding-top type, while the majority of bodies moving at the present time are closed bodies, which, because of their greater bulk and low weight density, should be accorded the proposed ratings. A statement of record shows that the dimensions of certain passenger automobile bodies, crated, which is the manner in which they are usually shipped, range from 102 inches by 57 inches by 36 inches, or 106 inches by 56 inches by 34 inches to 144 inches by 72 inches by 72 inches; that the weight of the bodies per cubic foot ranges from 1.8 pounds to 5.3 pounds, and that their values per pound range from 9.6 cents to $1.41. This statement covers 28 different bodies, 23 of which are of the closed type, the remaining 5, the only ones of 36 inches or less in height, being the open or folding-top type. Respondents insist that, owing to the manner in which these bodies are usually crated,

they are liable to injury by being scratched, and that only in rare instances is there available such freight as can be safely stowed around the crate without probability of damage to the body, the result being that in practice half a car is usually devoted to one of these bodies. They show that various other articles of great bulk and low weight density are classified four times first class, including bodies with standing tops for both self-propelling and non-self-propelling freight vehicles.

In justification of the proposed minimum of 1,000 pounds respondents show that various other commodities, principally bulky articles requiring extravagant use of space, when shipped in less than carloads, are subject to a minimum weight. They insist that even four times first class subject to a minimum of 1,000 pounds, when the entire half of a car is devoted to an automobile body, does not yield one-half of the revenue derived on the average car of less-than-carload freight. To illustrate this it is testified that the average rating applicable to less-than-carload freight between New York and Chicago is approximately rule 25, and that the average load per car weighs 12,000 pounds; that the rule 25 rate between these points is 67 cents per 100 pounds, which for 12,000 pounds yields $80.40 per car; that the first-class rate between Chicago and New York is 90 cents, and an automobile body at four times first class and a minimum of 1,000 pounds would yield $36, or slightly less than half the average car revenue.

Protestant manufactures passenger automobile bodies at Owensboro, and ships them in less than carloads to various destinations. These bodies are of the open or folding-top type, are smaller than the average shown in respondents' statement, and weigh from 450 to 760 pounds. The folding tops are detached and shipped knocked down, and when crated these bodies do not generally exceed 36 inches in height, three of such bodies being readily loaded in one end of a car. The interveners represent manufacturers of automobile bodies and complete automobiles, and while they object to the proposed changes, they did not submit any definite information regarding bodies shipped by them in less than carloads, their shipments being apparently almost exclusively confined to carload lots.

As above stated, in proposing to increase the ratings in question and to provide an individual minimum of 1,000 pounds, respondents had under consideration the larger bodies. Protestant insists that it is unfair to apply the proposed rating and minimum weight to the smaller bodies. It shows that usually three of these bodies occupy less car space than is required for one body of the larger type and that the aggregate weight of three of the small bodies generally exceeds the weight of one of the larger bodies.

In the present item the word "unfinished" is restricted to apply on bodies "primed but not varnished," while in the proposed item this

has been changed to "not finished," without definition. The rating on "unfinished" bodies was intended to cover bodies that had merely been primed or painted to prevent rust or corrosion in transit and had not been subjected to a baked enamel or lacquer coating. For respondents it was testified that a body that has been subjected to a baked coating, if scratched or otherwise marred to any extent, requires an entire recoating, which is not true of bodies that have not reached this further and more expensive stage of finish. They insist, therefore, that bodies that have been subjected to a baked coating present an element of risk of damage not present in shipping bodies which have not been subjected to this finish. The description "primed but not varnished" was not carried in the proposed item, for the reason that it did not properly describe the bodies it was intended to cover, and in some instances shippers insisted that this description covered bodies that had several coatings of enamel but not a final one.

Subsequent to the hearing respondents, in view of the facts developed, submitted the following proposed ratings and descriptions, which they now offer to establish in lieu of those under suspension:

	L. C. L.	C. L.
Vehicle parts:		
Automobile parts:		
Bodies:		
Passenger, see note 1:		
Finished, (further finished than primed, see note 2):		
In boxes or crates:		
Packages exceeding 36 inches in height, actual weight but not less than 1,000 lbs., each	4t1	.....
Packages not exceeding 36 inches in height	3t1	.....
Loose or in packages, straight or mixed c. l., min. wt. 10,000 lbs. (subject to rule 27)	.....	1
Not finished:		
S. u. or partially k. d.:		
Loose or in packages, exceeding 36 inches in height, actual weight but not less than 1,000 lbs. each	4t1	.....
Loose or in packages, not exceeding 36 inches in height	3t1	.....
Loose or in packages, straight or mixed c. l., min. wt. 10,000 lbs. (subject to rule 27)	.....	2
Completely k. d.:		
Parts not flat nor nested:		
Loose or in packages	1½	.....
Parts flat or nested:		
Loose or in packages	3	.....
Loose or in packages, c. l., min. wt. 30,000 lbs	.....	6

NOTE 1.—The height measurement of the package, or of the body if shipped loose, is to be taken with the body in its natural upright position.
NOTE 2.—The term "finished" will include any coating baked on.

Under schedules so framed there would be no increase in the present rating of finished bodies not exceeding 36 inches in height, or in those bodies unfinished and not crated or boxed, and there would be no minimum provision in connection with any such body. The present rating of such bodies, unfinished and crated or boxed, would be increased from double to three times first class, but in all cases the ratings would be lower than those proposed in the sus-

pended schedules. Bodies in excess of 36 inches in height would be increased in rating as proposed in the suspended schedules, subject to the 1,000-pound minimum. The suggested definitions of finished and unfinished bodies, except possibly under the note 2, apparently would not practically modify the present provisions, and in their entirety would be sustained by the evidence adduced.

We find that the less-than-carload ratings proposed in the suspended schedules as to bodies for passenger automobiles not exceeding 36 inches in height, in so far as they exceed three times first class, and the proposed minimum of 1,000 pounds as applicable to such bodies, have not been justified, but that in all other particulars the schedules have been justified. An order requiring the cancellation of the suspended schedules will be entered, but respondents will be permitted to file, effective upon five days' notice, new schedules not inconsistent with the foregoing views and findings.

No. 8068.

KINDLING MACHINERY COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted January 22, 1917. Decided May 9, 1918.

Charges on street washing machines in less than carloads, from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex.; and Chicago, Ill., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

F. M. Elkinton and *Fred L. Hubbard* for complainant.

R. W. Fyfe for western classification lines.

John M. Sternhagen for official classification lines.

A. P. Humburg for Illinois Central Railroad Company and Central of Georgia Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of street washing machines at Milwaukee, Wis. By complaint, filed June 5, 1915, as amended, it alleges that the charges collected by defendants on four less-than-carload shipments of street washing machines forwarded from Milwaukee to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago, Ill., May 10 and June 7, 1913, March 12, 1914, and March 11, 1915, respectively, were unreasonable and unduly prejudicial. Reparation and the establishment of reasonable rates are asked. The claim covering the shipment to Savannah was presented to the Commission informally within the statutory period. Rates are stated in amounts per 100 pounds.

The article shipped is known as a squeegee or street washer, and is intended for use only on smooth surfaced streets. It is a patented four-wheeled, two-horse vehicle, equipped with perforated water pipes beneath a water tank and directly in front of the rear wheels. A rotary roller, or squeegee, consisting of a metal core, from which protrude spiral slotted blades into which stout strips of flexible rubber are inserted, extends beyond and is revolved by the rear wheels. This roller is adjusted so as to permit mechanical elevating or lowering from the driver's seat. It is manufactured

only in one style, which, with the pole removed, is about 12 feet long, 7½ or 8 feet wide, and 8 feet high; weighs 3,600 pounds, or approximately 5 pounds per cubic foot; and sells for $1,250, delivered anywhere in the United States. It is shipped mounted on wheels, with pole detached and roller boxed.

The shipments moved over defendants' lines. No specific rates or ratings were applicable and charges were collected on the shipments to Chicago, Pine Bluff, and Greenville at the first-class rates of .25 cents, $1.20, and $1.67, respectively, minimum 5,000 pounds, governed by the western classification; and on the shipment to Savannah, at the double first-class rate of $2.72, governed by the southern classification, and the actual weight of 3,600 pounds, which were the charges applicable to sprinkling wagons except that the southern classification provided a minimum of 4,000 pounds. The western classification did not provide for the application to articles not specifically rated of ratings on analogous articles, and therefore neither the sprinkling wagon rating nor any other rating was legally applicable to the shipments governed by that classification.

Complainant does not attack the rate, but only the minimum weight upon the basis of which charges were assessed, except on the shipment to Savannah, as to which only the rating is attacked. It contends that its street washer can be loaded in an ordinary box car. All the shipments moved in box cars, but they had either extra wide or staggered doors and were therefore special equipment. In *Minimum Charges on Bulky Articles*, 33 I. C. C., 378, we recognized the propriety of a minimum charge on articles the dimensions of which did not permit loading through the center side door 6 feet wide by 7 feet 6 inches high without the use of end door or window in a closed car not more than 36 feet long, 8 feet 6 inches wide, and 8 feet high. It is apparent that complainant's washer could not be loaded in such a car. Prior to May 15, 1915, the minimum charge provided by the western classification on articles too large to be loaded through the side door of a 36-foot box car was that which would have accrued on 5,000 pounds at the first-class rate. On that date, in compliance with our order in the *Bulky Articles Case*, *supra*, the minimum on articles which could not be loaded through a door and in a car of the dimensions above stated was reduced to 4,000 pounds, but no change was made in the specific minimum applicable to sprinkling wagons. Complainant contends that the latter was based on the minimum formerly provided in the rule fixing the minimum charge on bulky articles, and that this rule having been condemned by us and the minimum reduced from 5,000 to 4,000 pounds, the use of the 5,000-pound minimum in connection with these shipments resulted in unreasonable charges. Hereinafter when reference

is made to ratings on less-than-carload shipments with no minimum it will be understood to mean no minimum other than that which may apply under bulky articles rules in the different classifications.

Complainant cited, by way of comparison, the western classification first-class ratings on less-than-carload shipments of street sweeping machines, farm and traction engines, self-propelling dump wagons, with no minimum; hose carriages, with a minimum of 3,000 pounds; and hose carts, with a minimum of 2,000 pounds; and the double first-class rating on less-than-carload shipments of automobiles, minimum 2,000 pounds. Since September 1, 1916, the ratings have been, on less-than-carload shipments of hose carriages, double first class at actual weight, subject to a minimum charge based on 5,000 pounds at the first-class rate; and on hose carts, two wheeled, double first class, with no minimum.

It was testified on behalf of the Western Classification Committee that complainant's washer is analogous to a sprinkling wagon and should take the same rating and minimum, which are also applied to street flushers, and urged that if the minimum weight is reduced the rating should be increased. There were cited less-than-carload ratings ranging from one and one-half times first class to three and one-half times first class, no minimum, on two-horse coal wagons, stake wagons, ice wagons, and tank wagons.

The southern classification contained an analogous article rule and therefore in our opinion the double first-class rating, minimum 4,000 pounds, applicable to sprinkling wagons was legally applicable to the shipment to Savannah, so that this shipment was undercharged. As stated, complainant attacks only the rating on this shipment. It cited the double first-class rating on less-than-carload shipments of automobiles, minimum 2,500 pounds, and the less-than-carload ratings on fire engines, delivery wagons without springs, manure spreaders, road rollers, traction engines, street sweeping machines, and hand cars, which ranged from third class to one and one-half times first class, with no minimum. Subsequent to the time of movement, the less-than-carload rating on fire engines was made subject to a minimum charge based on 5,000 pounds each at the first-class rate. Particular emphasis is laid upon the ratings in both the western and southern classifications on street sweeping machines with which it is contended complainant's machine competes.

For the southern lines contemporaneous less-than-carload ratings were cited on spraying or sprinkling carts and wagons, lawn, field, garden, or orchard, double first class, no minimum, and on hose reels, n. o. s., hose wagons with chemical engine attachments, stage coaches, street sprinkling wagons and tank wagons, double first class, minimum 4,000 pounds. Also, rates on various types of heavy vehicles

which were and are rated in less than carloads from one and one-half times first class to three times first class, with no minimum; and on numerous agricultural implements, set up, in less than carloads, which are rated double first class, with no minimum. They contend that street sweepers are more desirable traffic than complainant's washer in that the seat is removed so that there is a flat top upon which other freight might be loaded and that sometimes they are set up on edge in the cars. It was testified that the volume of movement of sprinkling and tank wagons is much greater than of complainant's washer, and that there has been no complaint against the application of the ratings assailed to such wagons.

Since the hearing the recommendations of the Committee on Uniform Classification have been amended to include an item covering street sprinkling and street washing wagons, in less than carloads, "s. u., actual weight, subject to a minimum charge of 4,000 pounds at first-class rate." The current official classification contains an item covering street sprinkling or washing wagons which conforms to the uniform description, with a less-than-carload rating of first class. Western classification No. 55, which became effective April 1, 1918, also contains an item covering these articles in conformity with the uniform description, but the rating is one and one-half times first class in less than carloads. The southern classification has been changed by eliminating the minimum.

Upon this record we find that the charges collected on the above-described shipments to points other than Savannah and the charges legally applicable to the shipment to Savannah are not shown to have been unreasonable or unduly prejudicial. The rates charged were the same as those contemporaneously applied to street sprinkling wagons, and a specific finding with respect to the measure of the rates for the future on street washing machines would necessarily affect the rates on street sprinkling wagons which move in much larger volume. In view of this fact as well as the changes which have been made in the ratings in question and the meager record, we do not feel warranted in making such a finding. We are of opinion, however, that rates not in excess of those contemporaneously applicable on street sprinkling wagons under the southern classification should be made applicable to street washing machines by specific provision instead of by analogy as at present.

An order dismissing the complaint will be entered.

No. 9682.

WEST VIRGINIA RAIL COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted October 31, 1917. Decided May 17, 1918.

Rate on iron and steel rails, in carloads, from Huntington, W. Va., to Birmingham, Ala., found unreasonable and unduly prejudicial. Reasonable maximum rate prescribed and reparation awarded.

Willis H. Fowle and *W. P. Tingley* for complainant.

J. S. Patterson for Chesapeake & Ohio Railway Company and Baltimore & Ohio Railroad Company; *Edward D. Mohr* for Louisville & Nashville Railroad Company; and *R. Walton Moore* and *Charles D. Drayton* for Alabama Great Southern Railroad Company; Carolina, Clinchfield & Ohio Railway; and others.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

Complainant, a corporation, manufactures iron and steel rails at Huntington, W. Va. By complaint filed May 14, 1917, it alleges that the rates of $5.75 and $6.18 per long ton, respectively, maintained by defendants prior to and on and after January 1, 1916, on iron and steel rails, in carloads, from Huntington to Birmingham, Ala., and points taking the same rates were and are unreasonable and unduly prejudicial. We are asked to prescribe reasonable and nondiscriminatory rates and to award reparation on shipments which moved within two years prior to the filing of the complaint. Rates are stated in amounts per long ton unless otherwise specified.

Huntington is on the south bank of the Ohio River. By way of the Chesapeake & Ohio Railway it is 161 miles southeast of Cincinnati, Ohio, and 139 miles east of Lexington, Ky. There are numerous routes from Huntington to Birmingham, but the principal and shortest practical route is over the Chesapeake & Ohio to Lexington and the Southern Railway system beyond, a distance of 538 miles. By way of Cincinnati, using the Chesapeake & Ohio to that point, the distance is 639 miles; and over the Chesapeake & Ohio to Elkhorn

City, Ky., Carolina, Clinchfield & Ohio Railway to Johnson City, Tenn., and the Southern Railway system lines beyond, 617 miles. The same rates apply over all routes. Most of complainant's shipments move through Lexington, and none through Cincinnati in connection with the Chesapeake & Ohio.

Complainant manufactures only light rails, generally used in coal mines. Its raw material consists of worn or obsolete steel rails and new but defective standard rails known as "seconds" or "culls," which are reduced by rerolling to the light rail. The same rates apply on the light rails as on the standard rails.

The basis of rates on railway track material to the south was established in 1893, by the Southern Railway & Steamship Association. Proportional or basing rates were fixed from Cincinnati, Louisville, Ky., Hagerstown, Md., Alexandria, Va., Baltimore, Md., Philadelphia, Pa., and New York, N. Y., to the territory of that association, which then comprised the entire southern territory; and rates from the interior rail mills in central freight association and trunk line territories were made by adding to the basing rates the lowest rates or specifics from the mills to the respective basing points, the lowest combination of rates from the mills to the points of destination in the southern territory referred to being adopted as the rate over all routes. The rates here assailed were constructed, in accordance with this general basis, upon the Cincinnati combination and published as specific commodity rates. The $5.75 rate was based upon $1.60 Huntington to Cincinnati and $4.15 beyond. The $6.18 rate resulted from an increase in the Huntington-Cincinnati rate to $1.68, following *The Five Per Cent Case*, 31 I. C. C., 351, and an increase in the rate beyond to $4.50, the level of the Cincinnati-Atlanta rate, to effect the parity prescribed in *Atlanta Freight Bureau* v. *N. C. & St. L. Ry.*, 29 I. C. C., 476.

Defendants represent that, instead of $6.18, the rate should be $5.85, and their evidence is in justification of a rate in that amount. The $5.85 basis is arrived at by adding to the Cincinnati-Birmingham rate a differential of $1.35, concerning which the following explanation is made: In May, 1915, following the opening of the Carolina, Clinchfield & Ohio route into the Carolinas and the southeast, the carriers adopted a new general basis for constructing rates from the Huntington-Kenova group. The territory of destination was divided by the following consecutive lines in Georgia: The Southern Railway from Cohutta to Dalton, the Western & Atlantic Railroad from Dalton to Atlanta, the Georgia Railroad from Atlanta, through Camak, to Macon, and the Southern Railway thence to Brunswick. To territory east of the dividing line it was agreed

to make the rates the same as from Cincinnati thereto, while for constructing through rates to the territory west of the line a set of differentials over Cincinnati, approximating the differences in the Cincinnati and Louisville rates to that territory, was adopted. It was pointed out that the average distance from the various points in the Huntington-Kenova group exceeds the Cincinnati-Birmingham distance by 95 miles, while the distance to Birmingham from Cincinnati exceeds the distance from Louisville by only 84 miles. The sixth-class differential proposed was 6 cents per 100 pounds, and on rails, rated sixth class in the southern classification, it was proposed to apply the substantial equivalent, or $1.35 per long ton, as the differential over Cincinnati in making the through rates from Huntington to Birmingham. Explaining that the present rate of $6.18 was inadvertently established, defendants desire to reduce it to $5.85 to conform to the agreed basis.

Objecting to a rate made upon any combination or differential over Cincinnati, complainant urges that Huntington is also an Ohio River crossing, has been so recognized by the carriers in providing for the differential basis referred to, and has been deprived of the benefit of its location. It is observed that the distance from Huntington to Birmingham by way of Lexington is only 60 miles in excess of the distance from Cincinnati to Birmingham; that the route from Cincinnati crosses the Ohio River and is otherwise wholly in southern territory, while the route from Huntington includes no river crossing and for a distance of 139 miles to Lexington is over the Chesapeake & Ohio which, it asserts, can not be classed as a southern carrier. While recognizing that the rates on classified traffic from Huntington to the southeast should bear a proper relation to the rates from other Ohio River points, complainant urges that the situation is different with respect to rails and that there is no reason why there should be any fixed relation between the rates on rails from Huntington and Cincinnati, as Huntington is not north of the river and rails are not manufactured at other Ohio River points. Arguing that no differential in excess of the 40-cent differential, Cincinnati over Louisville, could be conceded, complainant insists that if the rate from Huntington is to be made with relation to the rates from other crossings it should be no higher than the rate from Cincinnati, and that any differential should be in favor of Huntington, the producing point.

For defendants it was testified that that portion of the Chesapeake & Ohio's line, known as its Lexington district, is particularly unfavorable from the standpoint of operating conditions, due to adverse grades and relatively low traffic density, and is approached

from the main line over the tracks of the Ashland Coal & Iron Railway for a distance of 21½ miles, under a trackage arrangement which excludes the Chesapeake & Ohio from participation in traffic originating at or destined to points on the leased line. Defendants direct attention to the fact that the opening of the Carolina, Clinchfield & Ohio route did not shorten the distance from Huntington to Birmingham, and also to the difference in transportation conditions respectively at Huntington, Cincinnati and Louisville, and insist that the proposed rate would constitute a full recognition of Huntington's geographic and rail location. They urge that, as no rails are manufactured at Cincinnati and crossings west thereof, the proposed differential would apply in connection with essentially basing or proportional, rather than local, rates from Cincinnati, a departure from the combination basis which would effect a material reduction. Defendants' witness further testified that, because of the use of standard rails by the carriers, their movement under normal conditions greatly exceeds the movement of light rails and, except for the influence of certain of the important southern roads which do not reach the crossings and must pay the tariff rates on standard rails for their own use to points where they can take delivery, the rates from the crossings to southern territory would undoubtedly have been higher; also that if the rate in question is reduced below the proposed basis, the fourth section of the act will require that the rate so established be maintained as a maximum at intermediate points on direct lines, and moreover necessitate a change in the entire rate structure.

No rails are manufactured at any points in the Huntington-Kenova group except Huntington, and as a number of points in the group are on the north bank of the river and farther distant from Birmingham, complainant challenges the fairness of the grouping with respect to the differential proposed. Defendants respond that the differentials were arranged with reference to the group on all classes and commodities, and in considering the rates on rails from Huntington to southern territory the group relation should necessarily be considered, though no rails are manufactured at the other points included.

Complainant attached considerable importance to a commodity rate of $3.75 which has been maintained for a number of years on steel rails from Birmingham to Huntington, yielding 6.97 mills per long-ton-mile as against 11.49 mills under the present rate in the opposite direction, and asks that that rate be prescribed. The light rail produced at Birmingham is manufactured from more expensive raw material than that used by complainant, commands a higher price than complainant's rail, and does not appear ever to have been

shipped to Huntington; the only rails shown to have moved under the rate having been old standard rails shipped to complainant as raw material. Defendants' witness testified that there is no relation between the northbound and southbound rates between these respective points, the northbound rates being in line with the general adjustment from Birmingham to the Ohio River, constructed by material concessions in the rates to permit the product of southern steel mills to be sold in the highly competitive markets north of the river. The defendants also show that even under the low basis northbound there has been only a relatively light movement of rails from Birmingham to northern points. With substantially similar transportation conditions affecting rates in opposite directions between the same points there should be no material disparity in rates, but it is clear that the $3.75 rate, established under the particular competitive conditions, is not in itself a fair measure of the rate in the opposite direction.

Complainant undertakes by exhibited comparisons to demonstrate that the Birmingham-Huntington rate is no lower than the level of the commodity rates on steel rails from Birmingham throughout the southeast, but the record, including defendants' counter showing, does not substantiate the conclusion. It was testified for defendants that to southern territory the rates from Birmingham are made with relation to the rates from Cincinnati; and, with the exception of rates to the Atlantic ports, the rates from Birmingham to the southeast appear to be generally on a materially higher basis than the Cincinnati-Birmingham rate of $4.50. The record contains reference to some rates that are out of line, but it was testified that, while the rates from Cincinnati have been adjusted under our Fourth Section Order No. 8866, the rates from Birmingham have not as yet been revised, and that in the revision it will be their purpose to increase some of the lower rates.

The complainant cites rates from Huntington to various points in official classification territory, upon a lower basis than the rate proposed from Huntington to Birmingham; but the rate in question may not properly be measured by the standard of rates in that territory. The rate assailed is also alleged to be unreasonable and unduly prejudicial as compared with rates to Birmingham from other manufacturing points north of the river. The following table shows the rates to Birmingham from certain of the points particularly refered to, also the present and proposed rate from Huntington and earnings under the respective rates:

To Birmingham from—	Short-line distance.	Rate.	Earnings per ton-mile.	Earnings per car-mile.[1]
	Miles.		*Mills.*	*Cents.*
Huntington, present rate	538	$6.18	11.49	23.0
Proposed rate		5.85	10.87	21.7
Newark, Ohio	627	6.08	9.70	19.4
Lorain, Ohio	720	6.18	8.58	17.2
Youngstown, Ohio	778	6.34	8.15	16.3
Pittsburgh, Pa	789	6.50	8.24	16.5
Buffalo, N. Y	923	6.80	7.37	14.7

[1] Based on a carload minimum of 20 long tons.

As no changes are proposed in the contrasted rates, the proposed rate from Huntington would be lower than any of them, and, the relative transportation conditions considered, the earnings under the proposed rate would compare favorably with the earnings under the rates from the more distant producing points north of the river.

Upon the facts of record we find that the rate of $6.18 per long ton was, is, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeded or may exceed $5.85 per long ton. We further find that complainant has made shipments and paid and borne the charges thereon; that it was damaged thereby to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest, on all shipments the charges on which were paid within the statutory period. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing as to each shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, amount of charges and date collected, rate found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for vertification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 4363.

GAMBLE ROBINSON COMMISSION COMPANY

v.

ARCADIA & BETSEY RIVER RAILWAY COMPANY ET AL.

Submitted April 1, 1918. Decided May 27, 1918.

Charge of $5 per car per trip for the use of a refrigerator car in the movement of apples from points of origin in Michigan to points in Iowa and Minnesota found not to have been unreasonable.

L. A. Knudsen for complainant.

John C. Bills for Pere Marquette Railroad Company, Ann Arbor Railroad Company, and Manistee & North Eastern Railroad Company; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; *Alfred H. Bright* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; and *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

Report of the Commission.

McChord, *Commissioner:*

This complaint arises out of the through shipment of 44 carloads of apples in September, October, November, and December, 1909, from points in the state of Michigan to points in Iowa and Minnesota, upon which a charge of $5 per car was assessed for furnishing refrigerator cars. The originating carriers were the Pere Marquette, Arcadia & Betsey River, Manistee & North Eastern, and Ann Arbor railroads. Complaint was filed in 1911, and evidence was submitted the following year. Before the case was disposed of the Commission instituted an investigation into the use and operation of private cars, Docket No. 4906, and this complaint was consolidated therewith. No additional evidence was submitted in the *Private Car Case* with respect to the matters and things here involved, and the case will therefore be disposed of on the original record, which contains all the facts.

The allegation of the complaint is that the charge of $5 per car for furnishing refrigerator cars in which to transport the shipments in question was unreasonable on the ground that it was defendants' duty to furnish such cars without charge.

The complainant shipped 44 carloads of apples from points on the railroads named and paid $5 per car for the use of refrigerator cars furnished the originating carriers by Armour Car Lines and others. Reparation in the amount of $5 per car is asked.

At the time the shipments were made the tariffs of the Pere Marquette, to which the Arcadia & Betsey River and Manistee & North Eastern were parties, provided for a charge of $5 if a refrigerator car was furnished and additional charges if refrigeration was required. Such a charge for furnishing the car has been maintained by these defendants since 1906. Previous to 1906 the charge was $10 per car.

The Ann Arbor also provided in its tariffs for a similar charge on potatoes and vegetables, but did not provide for a charge on apples moved in refrigerator cars until December 2, 1909. According to the exhibits submitted in the record, only one car originated on the Ann Arbor and three moved over its line. These moved in September and November, 1909. It is not clear whether or not in each instance the Ann Arbor furnished the car and collected the charges.

The only question with respect to the charge for the cars originating on lines other than the Ann Arbor is as to the reasonableness of the charge for furnishing them. None of the carriers had refrigerator equipment of their own. When shipments required the use of such cars, they were secured from Armour Car Lines and other sources, and the charge of $5 was made therefor in accordance with tariff provision.

A large part of the apple crop of Michigan is shipped in box cars; for example, in the year 1911 some 335 carloads moved over the Pere Marquette in refrigerator cars and 1,403 moved in box cars. Refrigerator cars are used only when weather conditions are such that shipments must be protected en route.

In *Rental Charges for Insulated Cars*, 31 I. C. C., 255, a proposed charge of $5 per car for furnishing refrigerator cars for shipment of potatoes from points of origin in Minnesota and neighboring states was found not to be unreasonable. In that case, at page 257, we said:

> The record in this proceeding shows that in the beginning potatoes moved in box cars during the fall months and the rates were fixed on the basis of such movement; they now move largely in refrigerator cars and during the winter months. There is nothing of record to warrant the Commission in finding that the proposed charge is either unjust, unreasonable, or unduly discriminatory.

In numerous cases the Commission has found that charges for furnishing refrigerator cars are not unreasonable. *North Pacific Fruit Distributors* v. *N. P. Ry. Co.*, 40 I. C. C., 191; *Hale Halsell Grocery Co.* v. *M., K. & T. Ry. Co.*, 42 I. C. C., 491.

Carriers in the region herein involved for many years have published charges for furnishing refrigerator cars for perishable shipments. Among them may be noted the Grand Trunk Western, Detroit & Mackinac, Grand Rapids & Indiana, and East Jordan & Southern, in addition to those that participated in the transportation here in question. The perishable product crop of Michigan is uncertain. In the year 1909 an unusually large crop of apples was grown. The complainant had never shipped apples from that state previous to the year 1909, and did not ship any during the years 1910, 1911, and 1912. The carriers in the region, as a rule, do not own refrigerator equipment for the reason that uncertainty of the production of perishable products, crop failures, etc., would leave upon their hands equipment for which they would have no use. They have therefore, when necessary, secured equipment of this character from car lines and others for the purpose of supplying them upon request of shippers.

It appears that the ordinary method of shipment of apples from Michigan was in box cars, and this had been the practice for many years. When the shipments in question moved, it was not safe, because of cold weather, to transport them in box cars and it was necessary to use refrigerator cars. The evidence does not show that the complainant ordered refrigerator cars, but it is conceded that such cars were necessary because of the season of shipment.

It is to be remembered that the only contention of complainant is that the defendants made an unreasonable charge for furnishing refrigerator cars. There is nothing in the record to show that the charge made was unreasonable under the circumstances.

So far as the cars originating on or furnished to the shipper by the Ann Arbor are concerned, the charge made was without tariff authority and therefore should be refunded without an order. The complaint will be dismissed.

No. 8305.[1]

VIRGINIA PINE TIMBER COMPANY
v.
NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY ET AL.

Submitted May 9, 1916. Decided May 17, 1918.

Rates on mine props, in carloads, to Shenandoah, Pa., and points taking same rates, from —

1. Norfolk, Va., not shown to be unreasonable;
2. Certain points in Delaware, Maryland, and Virginia found unreasonable; reparation denied;
3. Roxbury, Providence Forge, Newport News, and Stearnes, Va., and on mine planks and mine boards, in carloads, from Roxbury, not shown to have been or to be unreasonable or unduly prejudicial. Complaints dismissed.

William F. Ashley, jr., *Andrew Foulds, jr.*, and *Ralph A. Koontz* for complainants.

Henry Wolf Biklé for Pennsylvania Railroad Company and affiliated lines.

J. S. Patterson for Chesapeake & Ohio Railway Company.

Benjamin R. Boggs for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are corporations and individuals engaged in the lumber business at Pottsville, Pa., Onley, Va., and Pocomoke City and Princess Anne, Md. By complaints, filed September 7, 1915, and on later dates, as amended, they allege that the rates charged on numerous carloads of mine props from various points in Maryland, Delaware, and Virginia, and on mine planks and mine boards, in carloads, from Roxbury, Va., to points in Pennsylvania between July 31, 1913, and September 15, 1915, inclusive, were unreasonable and

[1] This report also embraces No. 8305 (Sub-No. 1), D. C. Armstrong *v.* Same; No. 8305 (Sub-No. 2), Lycoming Timber & Lumber Company, Incorporated, *v.* Chesapeake & Ohio Railway Company et al.; No. 8305 (Sub-No. 3), L. T. Brandon *v.* New York, Philadelphia & Norfolk Railroad Company et al.; No. 8305 (Sub-No. 4), Lycoming Timber & Lumber Company, Incorporated, *v.* Chesapeake & Ohio Railway Company et al.; No. 8305 (Sub-No. 5), Lycoming Timber & Lumber Company, Incorporated, *v.* New York, Philadelphia & Norfolk Railroad Company et al.; No. 8305 (Sub-No. 6), Dennis Brothers Lumber Company, Incorporated, *v.* New York, Philadelphia & Norfolk Railroad Company et al.; and No. 8305 (Sub-No. 7), E. A. Bloxom *v.* New York, Philadelphia & Norfolk Railroad Company et al.

unjustly discriminatory. Reparation is asked and the establishment of reasonable rates for the future. Claims covering shipments moving more than two years prior to the dates on which the formal complaints were filed were presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The issues presented by the several complaints are treated both by the complainants and defendants as embracing the general group adjustment with respect to the rates on mine props from and to the territories concerned. The mine props are yellow-pine or oak logs, ranging from 6 inches to 16 inches in diameter and from 8 feet to 27 feet in length. They are used to support the gangways and roofs of mines and are usually shipped in the rough. Dependent upon the size of the props, the cost of their production and loading on cars ready for shipment ranges from $2 to $3 per net ton; the selling price at the mines from $4.25 to $5.50 per net ton.

The points of destination embrace points on the Pennsylvania Railroad, Philadelphia & Reading Railway, Central Railroad of New Jersey, Lehigh Valley, Lehigh & New England, and Delaware, Lackawanna & Western railroads within the territory in the eastern portion of Pennsylvania known as the anthracite coal regions.

The points of origin in No. 8305 and Sub-Nos. 1, 3, 5, 6, and 7, complaints which relate solely to mine props, embrace Norfolk, Va., and points in the peninsula formed by Delaware and the eastern portions of Maryland and Virginia, hereinafter called the eastern shore territory. Norfolk is 36 miles across Chesapeake Bay and Hampton Roads from Cape Charles, Va., the southernmost point in the peninsula, on the main line of the New York, Philadelphia & Norfolk Railroad. The territory of origin is served by the New York, Philadelphia & Norfolk, Philadelphia, Baltimore & Washington, Maryland, Delaware & Virginia, and Baltimore, Chesapeake & Atlantic railways, and is divided into two groups with respect to the rates on mine props to the anthracite coal regions. Generally speaking, between June, 1907, and February 23, 1915, the rates on mine props, in carloads, to all points in the anthracite coal regions were 12 cents from points in the eastern shore territory as far south as and including Exmore, Va., and 14 cents from points south of Exmore to and including Norfolk. Following *The Five Per Cent Case*, 32 I. C. C., 325, these rates were increased to 12.6 cents and 14.7 cents, respectively, the present rates. Each of these complaints covers some shipments which moved prior to February 23, 1915, and others which moved subsequent to that date. Complainants ask for rates of 10.5 cents from all of the points of origin, except Norfolk, and 12 cents from Norfolk.

Prior to 1907 a blanket rate of 10 cents applied on mine props, carloads, to the anthracite coal regions from points as far south

as Exmore. Complainants shipping from points in this group contend that under the 10-cent rate a profit was possible, but that the present rate of 12.6 cents is so high as to prevent a reasonable profit. It is stated that certain of the complainants have sustained an actual loss and have been compelled to discontinue the shipment of mine props. Numerous considerations, in addition to the freight rates, enter into this question. The reasonableness of rates is not to be gauged solely by the ability or inability of shippers to market their products with a profit. *Railroad Commissioners of Montana* v. *R., A. & P. Ry. Co.*, 31 I. C. C., 641, 644.

For defendants it is urged that the rates assailed are the same as, or less than, the rates on lumber from and to the same points; and that the lumber rates are lower than sixth class. The present rates on lumber from the eastern shore territory to the anthracite coal regions are 12.6 cents from points north of New Church, Va., and 15.8 cents from New Church and points south, including Norfolk. Exmore, the dividing point with respect to the group rates on mine props, is 35 miles south of New Church. Owing to the different grouping of the eastern shore territory with respect to the rates on mine props and on lumber to the anthracite coal regions, the rates on mine props from points as far south as New Church are the same as the lumber rates; from points between New Church and Exmore, inclusive, 3.2 cents less than the lumber rates; and from points south of Exmore to and including Norfolk 1.1 cents less than the lumber rate. Complainants contend that the rates on mine props from points north of New Church should also be lower than the lumber rates. The matter of the proper rate relationships between lumber and lumber products is now the subject of a general investigation in Docket No. 8131, *Rates on and Classification of Lumber.* The record does not disclose the reasons which led to the present grouping of the eastern shore territory with respect to the rates on mine props. If two groups are to be maintained the more logical dividing line from the standpoint of geographical boundaries would appear to be that obtaining with respect to the rates on lumber.

Shenandoah, Pa., will be taken as representative of the points of destination and Loretto, Md., and Nassawadox, Va., as representative of the points of origin in the eastern shore territory. Shenandoah is about 247 miles from Loretto and 309 miles from Nassawadox. The present rates of 12.6 cents from Loretto and 14.7 cents from Nassawadox yield respective ton-mile earnings of 10.2 mills and 9.5 mills. For the year ended June 30, 1916, over 50 per cent of the total tonnage of the New York, Philadelphia & Norfolk consisted of forest products, and the average ton-mile earnings of that carrier for an average haul of 111 miles were 7.74 mills. For the same

period the average ton-mile earnings of the Philadelphia, Baltimore & Washington for an average haul of 78 miles were 8.65 mills.

Complainants cite by way of comparison carload rates on cement, asphalt, anthracite coal, and fertilizer from points in Pennsylvania and Delaware to points on the New York, Philadelphia & Norfolk in Maryland and Virginia. These comparisons are unsupported by any evidence showing a substantial similarity of transportation conditions and therefore are not helpful. An exhibit filed for defendants shows numerous rates on mine props from points in Virginia and North Carolina by way of Norfolk to points in the anthracite coal regions. These rates are in all instances lower than the lumber rates and yield a ton-mile revenue ranging from 6.6 mills for a distance of 584 miles to 8.4 mills for a distance of 408 miles. In *Rickards* v. *S. A. L. Ry.*, 38 I C. C., 218, we prescribed rates of 3.5 cents and 4 cents on mine prop logs, in carloads, from points in North Carolina to Portsmouth, Va., for distances of 91.8 and 104 miles, respectively, which yield 7.7 mills per ton-mile. Rates to Shenandoah of 10.5 cents from Loretto and 12.6 cents from Nassawadox would yield 8.5 mills and 8.1 mills per ton-mile, respectively, and based on 52,000 pounds, the average weight of the shipments in question, nearly 22 cents per car-mile. The present rate of 14.7 cents from Norfolk to Shenandoah, 364 miles, yields 8.1 mills per ton-mile.

We find that the present rate of 14.7 cents on mine props, in carloads, from Norfolk to Shenandoah and points taking the same rates is not shown to be unreasonable, but that the rates from all of the points concerned in No. 8305 and Sub-Nos. 1, 3, 5, and 6, except Norfolk, to Shenandoah, and points taking the same rates, are, and for the future will be, unreasonable to the extent that they exceed or may exceed the following rates: 10.5 cents per 100 pounds from points north of New Church, viz, Loretto and Ocean City, Md., Ellendale, Del., Franklin City, Va., and grouped points taking the same rates; and 12.6 cents per 100 pounds from all points on the New York, Philadelphia & Norfolk in Virginia, New Church to Cape Charles, inclusive. Under the circumstances no reparation will be awarded.

The complaint in Sub-No. 7 relates solely to shipments from Onley, a point on the New York, Philadelphia & Norfolk south of New Church. The present rate from Onley to the anthracite coal regions is 12.6 cents, the rate herein found reasonable. That complaint will, therefore, be dismissed.

The complaints in Sub-Nos. 2 and 4 relate to carload shipments of mine props from Roxbury, Providence Forge, Newport News, and Stearnes, Va., and carloads of mine planks and mine boards from Roxbury. Roxbury, Providence Forge, and Newport News are 18,

23, and 75 miles, respectively, east of Richmond, Va., on the Peninsula division of the Chesapeake & Ohio Railway; Stearnes is 67 miles west of Richmond on the James River division of the Chesapeake & Ohio. Prior to January 16, 1915, carload rates on forest products, embracing mine props, planks, and boards, to all points in the anthracite coal regions, except Schuylkill Haven, Pa., were 15 cents from Roxbury, Providence Forge, and Newport News and 16 cents from Stearnes. On that date these rates were increased to 15.8 cents and 16.8 cents, respectively. Some of the shipments moved prior to and others subsequently to the establishment of these increased rates. Complainants contend that the rates charged were and that the present rates are unreasonable to the extent that they exceeded and exceed 12 cents from Roxbury and Providence Forge and 13 cents from Newport News and Stearnes.

Most of the shipments of mine props from producing points on the Chesapeake & Ohio move to collieries on the Philadelphia & Reading, which movement necessitates a four-line haul for distances over 400 miles. The present rate of 15.8 cents from Roxbury to New Philadelphia, Pa., a representative colliery point on the Philadelphia & Reading, yields 6.9 mills per ton-mile for a distance of 453 miles. Shipments to colliery points on the Pennsylvania move over the following route: Chesapeake & Ohio to Doswell, Va.; Richmond, Fredericksburg & Potomac Railroad, in connection with the Washington Southern Railway, to Potomac Yards, Va.; and lines of the Pennsylvania system beyond. The distance from Roxbury to Shenandoah over this route is 379 miles, and the 15.8-cent rate yields 8.3 mills per ton-mile.

We find that the rates assailed in Sub-Nos. 2 and 4 are not shown to have been or to be unreasonable or unduly prejudicial, and the complaints will be dismissed.

Complaint in Sub-No. 4 also alleges that a rate of 15 cents was charged on a carload of mine props shipped from Roxbury to Schuylkill Haven April 30, 1914, and that a rate of 16 cents was charged on 10 carloads of mine props shipped from Newport News to St. Nicholas, Pa., and New Philadelphia between April 10 and April 15, 1914, inclusive. The rates legally applicable were 14 cents on the shipment from Roxbury to Schuylkill Haven and 15 cents on the shipments from Newport News, so that these shipments were apparently overcharged. Complaint in No. 8305 also alleges that rates of 14 cents and 15 cents were charged on certain carloads of mine props from points in the eastern shore territory north of Exmore to points in the anthracite coal regions. These shipments were also apparently overcharged. Any outstanding overcharges should be promptly refunded, with interest.

Appropriate orders will be entered.

No. 8637.[1]

W. G. CHANEY COMPANY, LIMITED,

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted November 30, 1916. Decided May 17, 1918.

1. Rate on box shooks, in carloads, from Leavenworth, Wash., to Palisade, Colo., found to have been and to be unreasonable.
2. Rates on box shooks, in carloads, from Spokane, Wash., to Palisade and other points in Colorado not shown to have been or to be unreasonable or unduly prejudicial.
3. Rates on cedar poles, in single carloads, from Chewelah, Wash., to Mohrland, Utah, from Sand Point, Idaho, to Leadville, Colo., and from Colalla Spur, Idaho, to Montrose, Colo., and on cedar posts, in carloads, from Gravel Pit, Idaho, to Alamosa, Colo., found unreasonable to the extent that they exceeded and exceed by more than 2 cents per 100 pounds the rates contemporaneously in effect on like traffic from Spokane to the same destinations.
4. Rate on cedar posts, in carloads, from Ione, Wash., to Helper, Utah, found unreasonable to the extent that it exceeded and exceeds by more than 3 cents per 100 pounds the rate contemporaneously in effect on like traffic from Spokane to the same destination.
5. Reparation awarded.

Stephen V. Garey and *E. M. Fronk* for complainants.

R. J. Knott for intervener.

H. A. Scandrett, *A. C. Spencer*, *J. F. Finerty*, *E. N. Clark*, and *L. T. Wilcox* for defendants.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

Complainants, corporations engaged in the lumber business at or near Spokane, Wash., allege that the rates charged by defendants on certain carloads of lumber, cedar posts, and cedar poles shipped from points in Washington and Idaho to destinations in Colorado and Utah on the Denver & Rio Grande and the Colorado Midland railroads were unreasonable and unduly prejudicial. In an intervening

[1] The report also embraces No. 8637 (Sub-No. 1), Sand Point Lumber & Pole Company *v.* Spokane International Railway Company et al.; No. 8637 (Sub-No. 2), Sand Point Lumber & Pole Company *v.* Spokane International Railway Company et al.; No. 8637 (Sub-No. 3), Western Pine Manufacturing Company *v.* Denver & Rio Grande Railroad Company et al.; and No. 8637 (Sub-No. 4), S. H. L. Lumber Company *v.* Denver & Rio Grande Railroad Company et al.

petition, the Lamb-Davis Lumber Company, a corporation, alleges that the rate charged on 14 carloads of box shooks shipped from Leavenworth, Wash., to Palisade, Colo., was unreasonable. The Western Pine Manufacturers' Association, an organization of lumber dealers, intervened in support of complainants' allegations. We are asked to prescribe just and reasonable rates and to award reparation. The claims were seasonably filed. Rates are stated in cents per 100 pounds.

The following statement shows details of the shipments:

	Point of origin.	Destination.	Commodity.	Carloads shipped.	Rate charged.	Rate sought.
					Cents.	*Cents.*
No. 8637	Chewelah, Wash.	Mohrland, Utah	Cedar poles	1	51½	38
Sub-No. 1	Gravel Pit, Idaho.	Alamosa, Colo.	Cedar posts	1	56	42
Do.	Colalla Spur, Idaho	Montrose, Colo.	Cedar poles	1	51½	39½
Sub-No. 2	Sand Point, Idaho.	Leadville, Colo.	do.	1	45	33
Sub-No. 3	Spokane, Wash.	Palisade, Colo.	Box shooks	15	40	33
Do.	do.	Hotchkiss, Colo.	do.	1	45	38
Do.	do.	Grand Valley, Colo.	do.	1	40	33
Do.	do.	Thompsons, Utah	do.	1	40	33
Sub-No. 4	Ione, Wash.	Helper, Utah	Cedar posts	3	48	33
Intervener Lamb-Davis Lumber Co.	Leavenworth, Wash.	Palisade, Colo.	Box shooks	14	51	41

Chewelah is on the Great Northern Railway 64 miles northwest of Spokane. Gravel Pit, Colalla Spur, and Sand Point are on the Spokane International Railway 68 miles, 63 miles, and 75 miles, respectively, northeast of Spokane. Ione is on a branch line of the Chicago, Milwaukee & St. Paul Railway 117 miles north of Spokane. Leavenworth is on the Great Northern 197 miles west of Spokane. The rate applicable on the shipment from Chewelah to Mohrland was a combination rate of 53 cents made 8 cents to Spokane and 45 cents beyond. This shipment was undercharged 1.5 cents per 100 pounds. The rates applicable and charged on the shipments from Gravel Pit and Colalla Spur were combination rates composed of a local rate of 5 cents to Spokane, the 40-cent rate from Spokane to Denver & Rio Grande main line junctions, and the local rates beyond, except that on the shipment from Colalla Spur to Montrose 6.5 cents was charged for the factor of the haul from Grand Junction to Montrose instead of 5 cents, which was the applicable component, so that this shipment was overcharged 1.5 cents per 100 pounds. The rate on the shipment from Sand Point to Leadville, a main line junction point, was composed of a local rate of 5 cents to Spokane and the 40-cent main line junction point rate beyond. Palisade, Grand Valley, and Thompsons are on the main line of the Denver & Rio Grande. Hotchkiss is on a branch line of the Denver & Rio Grande and the 45-cent rate charged on the shipment

from Spokane to that point was made 5 cents over the 40-cent main line rate. The rate on the shipments from Ione to Helper was a combination composed of a local rate of 8 cents from Ione to Spear, Wash., a junction near Spokane, and the 40-cent main line rate beyond. The rate charged on the shipments from Leavenworth to Palisade was made 46 cents to Grand Junction, Colo., and 5 cents beyond. Prior to February 18, 1916, the rate from Grand Junction to Palisade was 6 cents, and certain of the shipments that moved from Leavenworth to Palisade prior to the reduction were undercharged 1 cent per 100 pounds.

Complainants contend: (1) That the points of origin should be accorded the same rates on this traffic as Spokane; (2) that the rates to the destinations involved from Spokane should be 7 cents less than the rates contemporaneously maintained from the Pacific coast group; (3) that the 11-cent component assessed from Salida, a main line junction, to Alamosa on the shipment from Gravel Pit to Alamosa described in Sub-No. 1 was and is unreasonable.

In support of the first contention it is shown that on forest products to practically all points east of Huntington, Oreg., except to points on the Denver & Rio Grande when shipments are routed by way of Salt Lake City, the principal shipping points in the vicinity of and north, east, and west of Spokane on the lines of the Great Northern, Northern Pacific, and Chicago, Milwaukee & St. Paul, including the points of origin in question, are included in the Spokane group. This grouping also obtains to points east of the Montana-North Dakota state line. Our decision in *Lamb-Davis Lumber Co.* v. *G. N. Ry. Co.*, 31 I. C. C., 341, wherein we considered the reasonableness of a carload rate of 60 cents on pine box shooks from Leavenworth to Peonia, Hotchkiss, and Austin, Colo., located on a branch line of the Denver & Rio Grande, is cited in this connection. The 60-cent rate was composed of a local rate of 15 cents to Spokane, a rate of 40 cents to Grand Junction, Colo., and a rate of 5 cents beyond. The rate from Spokane to these destinations was 45 cents. We found the rate assailed unreasonable to the extent that it exceeded 46 cents. Complainants here assert that since we there prescribed a rate 1 cent over the Spokane rate for a haul 197 miles greater than the haul from Spokane, no arbitrary over the Spokane rates should be added from the points beyond Spokane here in question, which are only from 63 miles to 117 miles distant from Spokane. From Astoria, Wash., 100 miles from Portland on the Spokane, Portland & Seattle Railway, the Portland rate of 40 cents is applied to destinations on the Denver & Rio Grande, and it is asserted that if the lines of the Union Pacific system can divide this rate with the Spokane, Portland & Seattle Railway they can well afford to absorb

the locals from the points of origin beyond Spokane to the latter point. Defendants urge that the territory of origin is of low traffic density and expensive operation and that the line performing the pick-up service is entitled to its local rate to Spokane. It is further urged that the rates from Centralia, Chehalis, and Aberdeen, Wash., to points on the Denver & Rio Grande are made by combinations on Portland, and that from points on the Tacoma Eastern Railroad and the Pacific Coast Railway the rates to Denver & Rio Grande points are based on Tacoma, Wash. In view of the fact that Leavenworth is a main line point we conclude that *Lamb-Davis Lumber Co.* v. *G. N. Ry. Co.*, *supra*, is not controlling here.

In *Sand Point Lumber & Pole Co.* v. *G. N. Ry. Co.*, 43 I. C. C., 59, we found, following *Eastern Oregon Lumber Producers' Asso.* v. *R. R. Co.*, 39 I. C. C., 316, that the rate on lumber from Springston, Idaho, 47 miles south of Spokane, on the Oregon-Washington, to Antelope, Mont., on the Great Northern, was unreasonable to the extent that it exceeded by more than 2 cents the rate contemporaneously maintained from Spokane. Following these cases it would appear that the rates from Chewelah, Gravel Pit, Colalla Spur, and Sand Point assailed should not exceed by more than 2 cents the rates from Spokane and the rates from Ione by more than 3 cents.

In support of its contention that the rates from Spokane should be 7 cents under the rates from the coast group, complainants cite *Potlatch Lumber Co.* v. *N. P. Ry. Co.*, 14 I. C. C., 41, and associated cases, known as the *Pacific Coast Lumber Cases*. We there found that the rates on lumber from the Spokane group to points west of a line drawn from Pembina, N. Dak., to Port Arthur, Tex., should be 3 cents less than the coast rates; and also that they should be graded up westwardly therefrom to a differential of not less than 7 cents at Buford and Medora, N. Dak.; Edgemont, S. Dak.; Cheyenne, Wyo.; and Denver, Colo. As a result the present rates from the points of origin, and all points in the Spokane group, to Denver are 33 cents, or 7 cents less than the coast rates, over all roads except the Denver & Rio Grande. The rate to Salt Lake City, Utah, from the Spokane group is 33 cents, which is 7 cents less than the rate from points in the coast group located on lines other than the Oregon-Washington. From points on that line in the coast group to Salt Lake City and Utah common points the rate is 37½ cents, only 4½ cents higher than the rate from Spokane. Defendants explain that the Denver & Rio Grande was not a party defendant in the cases referred to and argue that the underlying principle controlling our decision in that case was that the movement of the lumber was from the west directly east and that the differentials fixed were largely due to the lesser distance and lesser difficulties of operation from Spokane than from

the coast. They assert that the short line route from Portland, a representative point in the coast group, to points on the Denver & Rio Grande is in connection with the Oregon & Washington Line from Spokane and the two routes form substantially a Y to the points of destination; that the distance from Portland to Salt Lake City, a point through which all of the shipments pass, is substantially the same as from Spokane; and that the mountain grades which were in a measure controlling in the cases cited are more favorable from Portland to Huntington, as the haul from Portland to Pendleton, Oreg., is along a water grade. The shipments under consideration in the *Pacific Coast Lumber Cases* required transportation greater distances over the Cascade Mountains from the Pacific coast group as distinguished from the shipments originating in the Spokane group east of the Cascade Mountains. To reduce the rates to the destinations involved from Spokane and other points in question to a basis 7 cents lower than the rates contemporaneously in effect from Pacific coast points would create fourth section departures, as the rates from intermediate eastern Oregon points are higher.

Defendant Denver & Rio Grande pointed out that between Salt Lake City and Denver, 747 miles, its line crosses three mountain ranges, and considering the rise and fall in that distance, it lifts a car an aggregate of about 12,000 feet or over 2 miles. Also that between these points the main line curvature is about 12 degrees, branch line curvature about 25 degrees, and between Salida and Alamosa a branch line grade of about 4 per cent. Many of the steep grades and difficult curves which are described are in the neighborhood of Leadville, Colo., while the points of destination are west of that point.

We are of the opinion that upon this record we would not be warranted in establishing a differential under the coast rates as prayed.

As above shown local rates of the Denver & Rio Grande from main line points to the branch line destinations named are not specifically attacked except the 11-cent component charged from Salida to Alamosa, 85 miles, on the shipment from Gravel Pit. At Salida it is necessary to transfer shipments from standard gauge to narrow gauge cars the cost of which complainants' witness contends should not exceed $10 per car, or about 2 cents per 100 pounds. As the haul from Grand Junction to Montrose, 72 miles, on the shipment from Colalla Spur to Montrose, is performed for 5 cents per 100 pounds, it is contended that a higher rate should not have been charged for the haul from Salida to Alamosa, together with the estimated transfer charge of 2 cents, which would aggregate 7 cents per 100 pounds. The rate cited in comparison is in a different territory, and the movement is over standard-gauge tracks. Furthermore, complaintants' witness had no accurate knowledge of the cost of transfer

at Salida. In our opinion the 11-cent rate has not been shown to have been unreasonable.

Intervener Lamb-Davis Lumber Company emphasizes our findings in the *Lamb-Davis Lumber Case*, *supra*, to support its contention that the rate charged to Palisade from Leavenworth was unreasonable to the extent that it exceeded by more than 1 cent per 100 pounds the rate contemporaneously in effect from Spokane. As above shown, Palisade is on the main line of the Denver & Rio Grande; the points of destination considered in the case last cited are on branch lines of that carrier.

Defendants stated that prior to the order in the *Lamb-Davis Lumber Company Case*, *supra*, there were no joint rates from any points beyond Spokane to points on the Denver & Rio Grande and argued that the nonapplication of joint rates to points on the Denver & Rio Grande resulted from the fact that the Denver & Rio Grande Railroad requires so great a division to compensate it for service it renders that its connections can not afford to participate in such rates. The 60-cent rate from Leavenworth to Hotchkiss, in controversy in the *Lamb-Davis Lumber Case*, yielded 8.28 mills per ton-mile for a haul of 1,449 miles, while the reduced rate of 46 cents yields 6.35 mills. The division of the latter rate accruing to the Union Pacific system lines was quite low and defendants argue that if the rates asked in the instant case should be established the Union Pacific system lines would probably be required to accept similar low divisions. Divisions of joint rates are not controlling in determining the reasonableness of the rate. Our decision in the *Lamb-Davis Lumber Case* is controlling here.

Considerable evidence was introduced by complainants to show that undue prejudice against the Spokane shippers results from the fact that the rates on box shooks to destinations in Colorado from points in California, especially the Truckee district, are lower than the rates from Spokane. Complainants stated that they are unable to ship box shooks to Colorado points on account of competition, but whether competitors ship from the Truckee district is not of record. Furthermore, the Truckee district is nearer to the Colorado points than the Spokane district, which discloses a dissimilarity of circumstances on which undue prejudice can not be based.

We find that the rates assailed from Spokane are not shown to have been or to be unreasonable or unduly prejudicial, but with respect to the rates from other points we find: (1) That the rate on box shooks, in carloads, from Leavenworth to Palisade was, is, and for the future will be unreasonable to the extent that it exceeded or may exceed by more than 1 cent per 100 pounds the rate contemporaneously in effect on like traffic from Spokane to Palisade; (2)

territory. Spokane rates apply from points north of Spokane on the Spokane International to various points on the Minneapolis, St. Paul & Sault Ste. Marie and the Canadian Pacific railways and their connections for distances equal to that between Apline Spur and Payette; but those rates, it is said, were established to conform to the fourth section, as the points of origin are intermediate to Spokane. The 33-cent rate from Bonners Ferry to Payette is the same as the rate from Bonners Ferry to Denver and is held as maximum at Payette, an intermediate point. Complainant cites rates which are 1 cent over the Spokane rates from points on the Spokane Falls & Northern division of the Great Northern Railway to various points on the Chicago, Milwaukee & St. Paul Railway, the points of origin ranging from 100 to 199 miles from Spokane; also joint rates of 1 cent over the Spokane rates from Leavenworth, Wash., 197 miles west of Spokane on the Great Northern, to certain points on or by way of the Union Pacific system.

Defendants stated that the rate adjustment on the basis of 2 cents over Bonners Ferry from Alpine Spur to Chicago, Milwaukee & St. Paul points is practically the same as is in effect to points on the Union Pacific system. The distance from Portland, Oreg., to Payette is about the same as from Spokane to Payette, and attention is directed to the fact that a rate of 30 cents applies to Payette from Portland as well as from Spokane, and that the same arbitrary as applies from Alpine Spur, 5 cents, is added to the rate from Portland to make rates to Payette from points 93 to 181 miles north of Portland on the line of the Oregon-Washington Railroad & Navigation Company. Many other rate comparisons were introduced by defendants to show that the rate charged is properly aligned with the rate to Payette from many other points in Washington and Idaho.

In *Chaney Co.* v. *G. N. Ry. Co.*, 50 I. C. C., 332, we found that reasonable rates on cedar poles, in single carloads, from Chewelah, Wash., Colalla Spur and Sand Point, Idaho, to Mohrland, Utah, Montrose and Leadville, Colo., should not exceed the rate from Spokane by more than 2 cents. Chewelah, Colalla Spur, and Sand Point are 64, 63, and 74 miles, respectively, from Spokane. From Ione, Wash., a point 117 miles from Spokane, we found that the rate on cedar posts to Helper, Utah, should not exceed the rate from Spokane by more than 3 cents.

Following that case and on the record we find that the rate assailed is, and for the future will be, unreasonable to the extent that it exceeds or may exceed by more than 3 cents per 100 pounds the rate contemporaneously in effect from Spokane to the same destina-
n.

n order will be entered accordingly.

No. 9896.

INTERNATIONAL PAPER COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted December 10, 1917. Decided May 17, 1918.

Rates legally applicable on paper-box board, in carloads, from Bellows Falls, Vt., to Brightwood, Mass., and on the same commodity, in less than carloads, from Bellows Falls to certain points in Massachusetts and Maine, not shown to have been or to be unreasonable. Complaint dismissed.

D. C. Lorentz for complainant.
A. E. Prescott for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation engaged in the manufacture of wood-pulp paper and wood-pulp board at Bellows Falls, Vt., by its complaint filed October 3, 1917, as amended, alleges that the rates charged by defendants on a carload of wood-pulp board shipped April 7, 1915, from Bellows Falls to Brightwood, Mass., and on certain less-than-carload shipments of paper-box board and wood-pulp board forwarded from Bellows Falls to certain points in Massachussets and Maine, between April 3, 1915, and April 8, 1915, inclusive, and between May 26 and July 27, 1915, inclusive, were unreasonable. Reparation and the establishment of reasonable rates are asked. The claims were presented to the Commission informally on April 6 and 9, 1917.

The shipments consisted of paper board, of various thicknesses and finishes, made from wood pulp. The carload shipment was described in the bill of lading as wood-pulp board as were the less-than-carload shipments, which moved in April, 1915. The remaining less-than-carload shipments were described as paper-box board.

Under the caption "paper," the official classification, which governed, rated and rates pulp board, viz, box board and wood-pulp board, fifth class, in carloads, and third class in less than carloads. There were and are no specific commodity rates on wood-pulp board from and to the points in question. On the shipments so described

the class rates were charged. Prior to May 26, 1915, less-than-carload commodity rates lower than the class rates applied on paper-box board from Bellows Falls to most of these points, but there was no carload commodity rate on paper-box board to Brightwood. On that date the less-than-carload commodity rates were canceled, leaving applicable the class rates which were assessed on the less-than-carload shipments described as paper-box board, and a carload commodity rate was established from Bellows Falls to Brightwood. Cardboard is also rated fifth class in carloads and third class in less than carloads. Less-than-carload commodity rates lower than the class rates applied at the time the shipments moved and now apply on cardboard from and to the points in question, but there was and is no carload commodity rate on cardboard from Bellows Falls to Brightwood.

Complainant contends that the rate charged on the carload shipment was unreasonable to the extent that it exceeded the rate subsequently established on paper-box board, and that the rates charged on the less-than-carload shipments were unreasonable to the extent that they exceeded the rates contemporaneously applicable on cardboard.

Complainant states that at the time the shipments moved the product of its Bellows Falls mill consisted almost entirely of boards made of wood pulp. Subsequently to May 1, 1915, this material was billed as paper-box board and the commodity rates applying on that article were apparently accorded such shipments in less than carloads prior to the cancellation of the commodity rates. There does not appear to be any recognized commercial distinction between the terms wood-pulp board and paper-box board. In *Boxboard Rates from Wilmington, Ill.*, 29 I. C. C., 694, cited by complainant, box board is defined as a broad term for all boards made from waste paper or from straw or wood pulp which goes into the manufacture of paper. We find that the shipments consisted of paper-box board and that those forwarded in April, 1915, to the points to which commodity rates on paper-box board were in effect, were overcharged.

It is stated that the exact line of demarcation between cardboard, which is carried in a separate item in the classification, and paper-box board or paper is difficult to determine, but that, generally speaking, it includes a higher classed product than box board. Defendants state that the less-than-carload commodity rates on cardboard are the same as the rates on paper and that these rates are unreasonably low and do not establish the unreasonableness of the higher class 3 rates on paper-box board; that the less-than-carload rates on paper-box board were canceled as a part of a revision of its rate structure designed to increase its less-than-carload rates on

paper and paper products generally to the third-class basis, and that it is now preparing to make similar increases in the rates on cardboard and paper.

We find that the rates legally applicable are not shown to have been or to be unreasonable. As the record does not establish that complainant paid and bore the freight charges on the shipments found to have been overcharged, no order awarding reparation will be entered, but the overcharges should be promptly refunded to the proper party, with interest at the rate of 6 per cent per annum.

An order dismissing the complaint will be entered.

No. 9004.

DUNHAM COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted April 14, 1917. Decided May 22, 1918.

Two carloads of rough castings from Berea, Ohio, to Portland, Oreg., found to have been overcharged. Reparation awarded.

W. J. Evans for complainant.

H. A. Scandrett and *L. T. Wilcox* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the agricultural implement business at Berea, Ohio. By complaint filed June 30, 1916, it alleges that the rate of $1.25 per 100 pounds charged on two carloads of rough castings shipped in December, 1913, and January, 1914, from Berea to Portland, Oreg., was unreasonable to the extent that it exceeded the legally published rate of 80 cents per 100 pounds. Reparation is asked. The claim was presented to the Commission informally December 21, 1914. Rates are stated in amounts per 100 pounds.

The shipments consisted of disk-shaped castings, known to the trade as sections of "lump crushers." These sections, when assembled on an axle, form that part of a soil-pulverizing machine which comes

in contact with and crushes the lump soil. They were billed by complainant as "agricultural implement castings, plain, not machine or hand finished, but painted," and moved over defendants' lines. Charges were collected thereon in the total sum of $1,264.50, based on an aggregate weight of 101,160 pounds and a rate of $1.25 applicable to "wheels, iron or steel, for agricultural implements, minimum weight 24,000 pounds."

Complainant insists that the sections in question are not wheels but rough castings, and that the rate legally applicable was 80 cents provided for "castings, not otherwise specified (rough), plain as from the sand, not in any way hand or machine finished except being drilled with bolt holes. * * * minimum weight 40,000 pounds." The castings in question, which were in no way machine finished, were not otherwise specified in the governing tariff. No evidence was offered to show that the rate assailed was unreasonable *per se*.

Defendants were not represented at the hearing. Although the fact is not controlling, it is well to state that the rate claimed was quoted by the agent of the initial carrier and had been applied on all similar shipments made by complainant.

We find that the rate of 80 cents per 100 pounds was legally applicable and that the shipments were overcharged $455.22. The freight charges on these shipments were paid and borne by the consignee, who has assigned all its interest in the claim to complainant. Following *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 40 I. C. C. 735, we further find that complainant is entitled to reparation in the sum of $455.22, with interest.

An appropriate order will be entered.

No. 9168.

MEMPHIS FREIGHT BUREAU ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted April 7, 1917. Decided May 18, 1918.

The complainants, acting in the capacity of agents for undisclosed principals, are not, as such, entitled to an award of reparation. Defendant authorized, however, to pay reparation subject to the conditions stated in the report.

Riddick & Riddick by *T. K. Riddick*, and *Frank Lyon* for complainant.

Thomas Bond for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint was filed September 2, 1916, by the Memphis Freight Bureau, an organization of shippers and receivers of freight at Memphis, Tenn., on behalf of certain named individuals, partnerships, and corporations engaged in the cotton business at Memphis as factors or agents for numerous unnamed cotton growers. It is alleged that between September 1, 1911, and December 11, 1914, the rules and regulations of defendant's tariff, as construed and applied by it, governing the payment of refunds on shipments of cotton to Memphis for concentration or compression and reshipment beyond were unreasonable and unjustly discriminatory, and that the charges collected on such shipments were illegal. Complainants ask reparation on behalf of the cotton growers "who are too numerous and too widely scattered to be named as petitioners herein." The claims were brought to our attention by the St. Louis & San Francisco Railroad Company, hereinafter called defendant, June 18, 1914. By application dated May 8, 1915, defendant asked authority to make refunds to complainants, admitting that the charges were unreasonable.

In 1903 defendant increased its inbound rates from producing points on its line for the purpose of providing a margin out of which to make refunds upon shipments which were concentrated

in contact with and crushes the lump soil. They were billed by complainant as "agricultural implement castings, plain, not machine or hand finished, but painted," and moved over defendants' lines. Charges were collected thereon in the total sum of $1,264.50, based on an aggregate weight of 101,160 pounds and a rate of $1.25 applicable to "wheels, iron or steel, for agricultural implements, minimum weight 24,000 pounds."

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An appropriate order will be entered.

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In 1903 defendant increased its inbound rates from producing points on its line for the purpose of providing a margin out of which to make refunds upon shipments which were concentrated

or compressed at Memphis and reshipped over its rails. The regulations required the surrender of the paid inbound freight bills and copies of the outbound bills of lading showing a like number of compressed bales to entitle claimants to the refund on the basis of the through rates from the original point of shipment. Similar regulations have been continued by the other lines in and out of Memphis ever since that time. Following *In re Substitution of Tonnage at Transit Points*, 18 I. C. C., 280, 294, defendant filed a tariff, effective September 1, 1911, and amended October 18, 1911, which provided that local rates would be charged into Memphis and that upon reshipment over defendant's line the through rate from point of origin would be protected, subject to the following requirements:

Adjustment of charges under these rules will be made upon the presentation of claims which must be supported by the following documents, which should be presented to the carrier within 15 days after date of reshipment from transit point.

1. Freight bills covering shipment into transit point.
2. Signed copies of bills of lading covering shipment from transit point.
3. Reshipping certificate in the following form:

RESHIPPING CERTIFICATE.

Tender is hereby made to the ———— Railway of freight bills, number ——— dated at ———— for the purpose of securing the transit privileges on the cotton represented hereby.

This tender is made in good faith and with specific guarantee on our (or my) part that such transit privilege may legally be given under the rules of such carrier as published in its tariff ——— I. C. C. No. ———, issued ————, supplements and reissues thereof.

Signature of shipper.

A further provision was that—

The transfer of freight bills will be permitted only where the ownership of the cotton covered thereby is also transferred by bona fide sale prior to the reshipment; in such cases proper assignment as evidence of such change of ownership must be indorsed on each freight bill.

The shipments which moved prior to September 5, 1913, were governed by these provisions. On shipments after that date and until December 11, 1914, the regulations required, in addition, the presentation of "copies of outbound waybills from transit point" and that "the railroad agent must cancel and retain the original paid expense bills surrendered, and must indorse on the back of same number and date of waybill covering the outbound shipment."

Effective December 11, 1914, the regulations were changed in the following particulars: The requirement of the presentation of documents within 15 days and for the presentation of copies of outbound waybills from transit point were eliminated; the reshipping cer-

tificate was to be signed by the "claimant" instead of the "shipper"; and the item requiring presentation of signed copies of bills of lading covering the outbound movement was changed to read as follows:

(3) Signed copies of bills of lading for as many bales of like commodity reshipped over the lines of the St. L. & S. F. R. R. (See note.)

NOTE.—When the consignor of the shipment from the concentration point is other than the consignee of the cotton into the concentration point, as shown in the paid freight bills, the paid freight bills tendered in support of the claim must bear indorsement as required by item No. 50 or reissues.

(Item 50): Transfer of paid freight bills between dealers or reshippers will be permitted only when ownership of the cotton is also transferred by bona fide sale. A certificate to this effect shall be made in the following form on the face of the paid freight bill:

"This is to certify that there has been a bona fide sale to the undersigned of ——— bales of cotton.

Signature.

---"
Date.

The requirement that the agent, upon issuing the outbound bill of lading, should retain the paid inbound freight bills was eliminated, and a provision was added allowing claims to be filed by the consignee of the inbound shipment or the consignor of the outbound shipment. None of the shipments in question were covered by the rules and regulations of the above tariff effective December 11, 1914, and no complaint is made of the rules and regulations in effect since that time.

The question upon which the claims were submitted informally was: Could defendant lawfully make refunds to the complainants under the rules and regulations in effect between October 18, 1911, and December 11, 1914? With each claim there had been presented to the carrier, after the expiration of the time limit, the paid freight bills covering the shipment into the transit point, signed copies of bills of lading showing the shipment of a like number of bales of cotton out of Memphis over defendant's line, and a reshipping certificate in the proper form, signed by the inbound shippers or consignees at Memphis, the complainant factors. Upon notification by us that the claims were of such nature that they could not be determined informally, complainants entered certain claims in the receivership proceeding then pending in the district court of the United States for the eastern district of Missouri, eastern division, entitled *North American Co.* v. *St. Louis & San Francisco R. R. Co.* The report of the special master recommended that said claims be dismissed, and the report was confirmed by the court, upon the ground that the requirements of the tariff had not been satisfied. Complainants waive the claims presented in that case and which

accrued prior to the appointment of defendant's receivers, May 27, 1913, so that we are here asked to consider only claims which were brought to our attention upon the special docket within the statutory period of two years.

In *Red River Oil Co.* v. *T. & P. Ry. Co.*, 23 I. C. C., 438, we condemned as unreasonable an addition to presumably reasonable inbound rates as a penalty to be forfeited if the shipments outbound from the transit point should not move over the line which hauled the inbound shipments.

We are of opinion and find that the tariff provisions and regulations assailed were unjust and unreasonable so far as they operated to deny to those who bore the increased inbound rates, manifestly established to control or influence the outbound movement, the refunds which were to be made when that purpose should have been accomplished. The situation with respect to the complainants' right to have an award of reparation made in their favor is peculiar, however. These complainants do not allege injury to themselves. They frankly say that the refunds belong not to them but to their principals—the country growers and shippers "who are too numerous and too widely scattered to be named as petitioners herein." The Commission may award reparation only to the parties shown to be damaged. Those parties are not before us in this proceeding. The complainants here claiming as agents for the real parties in interest—for their undisclosed principals, say, in effect, "if reparation be awarded to us we will pay the amounts over to the rightful parties." But this is not sufficient. Complainants' intention to distribute among the numerous growers any funds received by them would not warrant an award to them. *Oden & Elliott* v. *S. A. L. Ry.*, 37 I. C. C., 345, 348, 349. In this situation the claims for reparation must be denied.

On the other hand, it is obvious that the defendant is in possession of funds resulting from these unpaid refunds to which it is not entitled and which it did not intend, or expect, to retain ultimately. It is the Commission's function and consistent purpose to see that full justice is done between carrier and shipper wherever it be practicable to effect that end. Injustice has been done and will be perpetuated if the defendant is permitted to withhold these refunds from the hands of those rightfully entitled to receive them. To the end, therefore, that justice may be done, and at the same time protection afforded to the defendant and the rule or principle of awarding reparation only to the party actually damaged be preserved inviolate, we shall make a permissive award of reparation under which defendant will be authorized to pay reparation to these complainants, other than the Memphis Freight Bureau, for and on account of the

individual growers and shippers and in respect of the particular shipments made by them subsequently to May 27, 1913, provided such shipments were covered in the claims presented to us in the defendant's application dated May 8, 1915, seeking authority to make refunds on the special docket. The defendant may protect itself in the payment of these amounts by requiring from the complainants here powers of attorney or other satisfactory written authority from each individual grower or shipper authorizing the defendant to pay the amount or amounts claimed to his, or its, agent. Statements of claims so paid, showing the name of the agent, the grower or original shipper, the amount paid, and the shipments covered, must be filed with the Commission within 60 days from the time the claims are paid.

No order for the future is necessary.

No. 9384.

STANDARD OIL COMPANY (CALIFORNIA)

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted April 19, 1917. Decided May 22, 1918.

Rates on interstate shipments of secondhand empty iron oil drums, returned, in less than carloads, from points in Oregon and Washington to Portland, Oreg., and Seattle, Wash., not found to have been unreasonable. Complainant not shown to have been damaged by the alleged undue prejudice. Complaint dismissed.

W. B. Roberts for complainant.

J. W. Mount for Oregon-Washington Railroad & Navigation Company.

H. N. Proebstel for Spokane, Portland & Seattle Railway Company and Oregon Trunk Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in refining and marketing petroleum and its products at San Francisco, Cal. By complaint, filed December 13, 1916, as amended, it alleges that the fourth-class rates charged by defendants on numerous less-than-carload shipments of secondhand empty iron oil drums, returned, shipped to Portland, Oreg., from points in Washington, and over interstate routes from points in Oregon and from Portland to Seattle, Wash., between September 15, 1914, and February 24, 1915, inclusive, were unreasonable and unduly prejudicial to the extent that they exceeded the one-half fourth-class rates contemporaneously applicable on secondhand empty iron oil barrels, returned, in less than carloads, from and to the same points. Reparation is asked. The claims were presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

Iron barrels and drums are in general use as carrier containers in the transportation of petroleum and its products. While so used they remain the property of the shipper and are returned to it when

empty. An iron oil drum is a straight-sided cylindrical container of approximately 110 gallons capacity. It measures over all 24 cubic feet, and weighs, when empty, approximately 220 pounds, or about 9 pounds per cubic foot. An iron oil barrel is somewhat similar to the drum, except for a slight bulge. It has a capacity of from 50 to 54 gallons, measures over all 12 cubic feet, and weighs, when empty, approximately 100 pounds, or about 8 pounds per cubic foot. Secondhand iron barrels and drums used on the Pacific coast for transporting oil are said to be of equal value.

The shipments consisted of secondhand empty iron oil drums and moved interstate over defendants' lines in the course of return transportation to complainant. At the time the shipments moved the western classification, which governed, rated secondhand empty iron oil barrels or drums, returned, in less than carloads, fourth class. This rating is still in effect except that it now applies without reference to whether or not these containers are "returned." Charges were collected on the shipments at the fourth-class rates legally applicable, except that a rate of 23 cents was charged on two of the shipments forwarded by way of the Northern Pacific Railway from Seattle to Portland, September 18 to October 27, 1914, respectively. The fourth-class rate legally applicable was 20 cents, so that the shipments were apparently overcharged. The amount of the overcharges should be promptly refunded, with interest.

During the time the shipments moved under exceptions to the classification one-half fourth-class rates were applicable on secondhand empty barrels in less than carloads from and to these points without reference to whether they were returned or whether they were made of wood or iron. These exceptions did not include secondhand empty drums. Effective March 1, 1915, the items providing for these exceptions were canceled, leaving applicable the fourth-class less-than-carload rates on secondhand empty iron oil barrels returned, as well as on secondhand empty iron oil drums returned. Since June 30, 1915, defendants have provided by exceptions to the classification for a rating of one-half fourth class on secondhand empty iron or wooden barrels and drums in less than carloads from and to the points referred to.

Complainant does not assail the present rates, but merely seeks reparation on the basis of the rates established June 30, 1915. On its behalf it is urged that the terms "iron oil barrels" and "iron oil drums" are used interchangeably by the trade and by the carriers; that there is no substantial difference in the cost of service in the transportation of secondhand empty iron oil drums and secondhand empty iron oil barrels; and that they were and are rated the same in the western classification.

For defendants it is stated that the exceptions to the classification as to empty barrels, while not differentiating between wooden and iron barrels, were originally made to aid in building up the vinegar industry in which wooden barrels were used, and that subsequently these exceptions were extended to include iron drums, as the carriers felt that they could not properly apply lower rates on empty wooden barrels used for transporting vinegar than on empty iron barrels or drums used for transporting oil. We recently approved a change in the western classification rating on iron, steel, or wooden drums, returned, used in the transportation of ammonia, glycerine, tar oil, cottonseed oil, olive oil, and acid, from one-half fourth class, any quantity, to fourth class in less than carloads. *Empty Carrier Ratings*, 46 I. C. C., 520.

A willingness was expressed on behalf of defendants to make reparation on the basis sought. But neither this nor the subsequent reduction of the rates is of itself sufficient to justify an award of reparation.

We find that the rates legally applicable are not shown to have been unreasonable. As any undue preference that may have existed in favor of empty iron oil barrels, returned, has been removed, and as there is no proof of damage to complainant by reason of the alleged undue prejudice, an order dismissing the complaint will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 921.

SOUTHEASTERN MANUFACTURED TOBACCO.

Submitted February 15, 1918. Decided June 10, 1918.

Proposed increased rates and differentials under the Virginia cities on manufactured tobacco from North Carolina manufacturing points to points in the southeastern territory found to be justified.

R. Walton Moore, *Charles D. Drayton*, and *S. P. Collier, jr.*, for respondents.

E. L. Travis and *J. L. Graham* for protestants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

Upon protests by various interests, certain tariffs filed by four of the southeastern lines in the fall of 1916 proposing a readjustment in their rates on tobacco from the Virginia cities and points in the state of North Carolina to southeastern destinations were suspended; and after the case had been heard and orally argued the tariffs were voluntarily canceled by the respondents to avoid complications, as was explained by them, with the tariffs then in prospect, and which later came under consideration in *The Fifteen Per Cent Case*, 45 I. C. C., 303. The proponents now desire to put in effect the differential adjustment provided for in the suspended tariffs, and upon their petition the case was reopened with the understanding that the issues involved would be considered upon the record heretofore made and as if the suspended tariffs had not been canceled.

It was proposed by the tariffs in question to increase the rates on manufactured tobacco from the Virginia cities and points in North Carolina to destinations in the southeastern territory and to create from the North Carolina originating points to a limited part of that territory a differential adjustment under the Virginia cities rates. No such differential adjustment has heretofore existed to any part of the territory, and none is now proposed, except to that portion of it included within the confines of a rough circle, with Atlanta as a center, the radii being the lines of the Southern, the Central of Georgia, the Western & Atlantic, and the Seaboard Air Line, and extending in the direction of Toccoa, Elberton, Columbus, West Point, Augusta, Macon, Rome, and Chattanooga, but not actually embracing the five cities last named. Points on certain of the cross-country lines of these carriers which connect with the lines just described were also included. To most of these destinations, including

Atlanta, the proposed differential from points of origin in North Carolina was 7 cents per 100 pounds; to certain stations south of Atlanta a differential of 2 cents was proposed. The increase suggested by the tariffs in the rates from the Virginia cities to the southeastern territory were not the subject of protest. Nor was any complaint directed against the proposed increased rates from the producing territory in North Carolina, except with respect to their relation to the proposed increased rates from the Virginia cities, the North Carolina protestants urging that they should have more ample differentials than those proposed by the carriers in the tariffs in question.

Winston-Salem is the largest tobacco manufacturing point in the state of North Carolina, although there are other factories at Durham, Reidsville, Statesville, and Greensboro, in the same state. The manufactured tobacco involved in the contemplated adjustment consists of smoking tobacco, cigars, cheroots, and cigarettes, all of which take first-class rates under the southern classification, and plug tobacco, which is rated third class. For convenience, only the first-class rates and differentials are hereinafter mentioned. The proposed rates to Atlanta are, from the North Carolina points, 93 cents per 100 pounds, and from the Virginia cities $1 per 100 pounds, the present rate from both producing sections being 80 cents. The water-and-rail rate from Baltimore to Atlanta is $1.07, and under a long-established relationship between the Ohio River and Baltimore this is also the all-rail rate from Cincinnati and Louisville. Prior to January 1, 1916, that rate was 98 cents. These are all any quantity rates.

Both the present and the proposed rates, although commodity rates, and published for convenience in a special tobacco tariff, are nevertheless made on the class basis, and this basis the respondents urge should properly apply on tobacco. The class rates to the southeastern territory from the Virginia cities and from North Carolina were readjusted on January 1, 1916, and the same differentials as are now proposed on tobacco were then established on first and third class traffic to the differential territory here under consideration. The respondents assert that had the tobacco rates not been formally published in a special tariff they would have been revised along with the class rates. With minor exceptions, tobacco shipped into the southeast from New Orleans, Nashville, Louisville, St. Louis, Chicago, and other points moves on class rates, which rates, together with the class rates from the Virginia cities and North Carolina, have now been readjusted in conformity with the order in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153.

The respondents state that heretofore no differentials under the Virginia cities rates have been published from North Carolina to

any part of the southeastern territory, because they regarded the rates from the Virginia cities as unduly low; they urge that this is true even of the proposed rates; that the lines from the Ohio River have always taken the position that the Virginia cities rates should be the same as the water-and-rail rates from Baltimore; and that the connections of the Virginia cities lines refuse now to join in rates to points on their lines which are lower from the Virginia cities than the water-and-rail rates from Baltimore. It is explained of record that rates from the Virginia cities to Atlanta lower than those over the water-and-rail routes from Baltimore were established in 1898 by the Richmond & Danville Railroad, which operated south from Richmond and West Point, and that it took this step in order to equalize, through those cities, the water-and-rail through rates from the east with the water-and-rail through rates from the east by way of the south Atlantic ports.

To all destinations in the southeastern territory, except points in the southwestern portion thereof, such as Birmingham, Montgomery, and Selma, the protestants urge that there be created from the North Carolina producing centers a differential of 13 cents under the rates to the same destinations from the Virginia cities, and that to the excepted portion just referred to a differential of 7 cents be established. Conceding of record that heretofore no justification for this demand has existed, they now urge that the sharp increase in the rates from the Virginia cities will warrant the differential and permit the giving to shippers of North Carolina the rightful benefits of their location. On both inbound and outbound tobacco shipped between North Carolina and the north, the protestants pay a minimum differential of 20 cents over the Virginia cities; they assert that the rule should work both ways and that when the difference in distance is to their advantage they should have the benefit of differentials under the Virginia cities. The position of the carriers, briefly stated, is that both as to points in southern Georgia east of the proposed differential territory and points west thereof in southwestern Georgia, in Alabama and Mississippi, the application of the differentials desired by the protestants would result not only in unjustifiably low rates from North Carolina but probably also in complaints from Baltimore and the Ohio River cities, and further that it would bring about an improper adjustment of the rates as between North Carolina, the south Atlantic ports, gulf ports, St. Louis, and other points. The water-and-rail rate of $1.07 from Baltimore to Atlanta is applied as a maximum at intermediate points on reasonably direct routes to Atlanta as the result of the denial of fourth section relief to Atlanta; the same rate applies also from

North Carolina and the Virginia cities as well as from Baltimore to points in Georgia east of the proposed differential territory, except to certain points where fourth section relief has been granted. From the Ohio River cities, which, as already explained, take the same rates to Atlanta as does Baltimore, the rate of $1.07 to that point increases by successive steps to $1.45, as compared with which the rate of 94 cents from North Carolina asked by the protestants could not be maintained. In *Fourth Section Violations in the Southeast, supra*, the rate of $1.07 from Baltimore was referred to as "relatively low," and the respondents here compare that rate to Atlanta for the computed distance of 510 miles from Baltimore and the average distance of 464 miles from the Ohio River cities with the rate of $1 from the Virginia cities for an average distance of 523 miles and the rate of 93 cents from North Carolina for an average distance of between 350 and 400 miles.

In further support of their claim for a differential, and for comparative purposes, reference is made to the rate of 90 cents in effect from Wilmington to Atlanta, a distance of 267 miles, and from Nashville to Atlanta, 80 cents for 289 miles. But as the record clearly shows, the conditions under which those rates are made are so different as to make them of no great value for comparative purposes. It will not be necessary to go into further details. Suffice it to say that upon this record we see no reason why the respondents should be required to maintain on manufactured tobacco from North Carolina to points in the southeast commodity rates made on a lower basis than the first and third class rates, dependent on the form of the product. Nor do we see any reason why the differential territory on tobacco should not correspond with that on class traffic. As we have said, the proposed increases in the rates from the Virginia cities were not the subject of protest, nor were those from the North Carolina points, except with respect to their relationship to the Virginia cities rates. In concluding and finding upon the record before us that the rates and differentials proposed by the respondent carriers have been justified, we do so independently of and subject to Order No. 28 issued by the Director General of Railroads on May 25, 1918, providing an increase in existing freight rates in all parts of the United States, to go into effect on June 25 next. Under the circumstances no order seems to be required.

No. 9311.[1]

GREAT FALLS GAS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted June 15, 1917. Decided May 22, 1918.

Rate on heavy petroleum oils, viz, crude, smudge, gas, and fuel oil, in carloads, from Cowley and Greybull, Wyo., to Great Falls, Mont., found to have been unreasonable between September 10 and October 29, 1916, to the extent that it exceeded the present rate, which is found reasonable but unduly prejudicial. Reparation awarded and undue prejudice ordered removed.

William B. Moulton for Great Falls Gas Company.

J. W. Goodman for Great Falls Sewer Pipe & Tile Company, Mutual Oil Company, and Great Falls Commercial Club.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are the Great Falls Gas Company and the Great Falls Sewer Pipe & Tile Company, now known as the Great Falls Brick & Tile Company, corporations engaged in the manufacture of illuminating gas and fire brick, respectively, at Great Falls, Mont.; the Mutual Oil Company, a corporation dealing in petroleum oils at Kansas City, Mo.; and the Great Falls Commercial Club, a voluntary association of business men of Great Falls. By complaints filed November 6 and December 11, 1916, as amended, they allege that defendants' rates on heavy petroleum oils, viz, crude, smudge, gas, and fuel oil, in carloads, from Cowley and Greybull, Wyo., to Great Falls were and are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed a rate of 30 cents per 100 pounds maintained prior to September 10, 1916. We are asked to award reparation to the Great Falls Gas Company and to establish a reasonable rate. Rates are stated in cents per 100 pounds.

[1] This report also embraces No. 9311 (Sub-No. 1), Great Falls Sewer Pipe & Tile Company et al. *v.* Same.

Cowley and Greybull, the latter 43 miles south of the former, are local stations on the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington. The Burlington connects with the Northern Pacific Railway at Laurel, Mont., about 68 miles north of Cowley, and with the Great Northern Railway at Mossmain, Mont., about 3 miles east of Laurel. The Northern Pacific extends in a westerly direction from Laurel to Butte, 221 miles, and to Helena, Mont., on a branch line, 223 miles. The Great Northern extends in a northwesterly direction from Mossmain to Great Falls, 223 miles, and thence in a southerly direction to Helena, 321 miles, and to Butte, 394 miles. Anaconda, Mont., is on the Butte, Anaconda & Pacific Railway, 26 miles west of Butte.

As Cowley and Greybull take the same rates on petroleum oils to the Montana points in question the rates from the former will be referred to as representative. Prior to May 4, 1912, the defendants Burlington and the Great Northern maintained rates of 65 cents on refined oils and 58 cents on crude oils, in carloads, from Cowley to Great Falls, and the same rates applied to Butte by way of the Burlington and the Northern Pacific. On that date a rate of 30 cents was established on crude and fuel oils from Cowley to Great Falls, Helena, Butte, and Anaconda, but this rate was not made applicable to gas oil until October 15, 1912, and to smudge oil until November 20, 1913. On the latter date a rate of 60 cents became effective on refined or light oils from and to the above points. The last named rates to Helena, Butte, and Anaconda applied either by way of the Great Northern or the Northern Pacific and are still in effect by way of the Northern Pacific. On September 10, 1916, the rate on heavy oils by way of the Great Northern to Great Falls, Helena, and Butte was increased to 60 cents, the rate applicable on light oils, and the Great Northern withdrew from the joint rates to Anaconda. On October 30, 1916, the rate on heavy oils to Great Falls was reduced to 45 cents, the present rate. As the rates assailed were increased subsequent to January 1, 1910, the burden is upon the defendants to justify them.

Complainants rely principally upon *Mutual Oil Co.* v. *C., B. & Q. R. R. Co.*, 38 I. C. C., 221, in which we prescribed rates of 60 cents on light oils and 30 cents on heavy oils from Cowley to Highwood and Coffee Creek, Mont., stations on the Chicago, Milwaukee & St. Paul Railway, 30 and 97 miles, respectively, east of Great Falls. They also contend that the 60 and 45 cent rates on heavy oils to Great Falls were and are unreasonable and unduly prejudicial as compared with the 30-cent rate to Helena, Butte, and Anaconda by way of Laurel and the Northern Pacific. As above shown, the distance to Great Falls on the Great Northern is approximately the

same as to Helena and Butte by way of the Northern Pacific, and while adverse operating conditions are encountered over both the Northern Pacific and the Great Northern, complainants show that the conditions are at least as favorable, if not more favorable, over the Great Northern. Among other comparisons, rates on heavy oils of 30 cents or less applying for greater distances in other territories are cited, but in the absence of detailed evidence as to the volume of traffic or other transportation conditions affecting those rates the comparisons are of little value.

It was stated for the Great Northern, which bore the defense, that the Northern Pacific, with its direct line from Laurel to Helena and Butte, was principally responsible for the establishment of the 30-cent rate on heavy oils to those points and to Anaconda and that the rate was published at the request of certain interests at Butte and Anaconda which desired to use fuel oil in competition with coal from Diamondville, Wyo., and Roundup, Mont.; and that having for competitive reasons joined with the Burlington in the establishment of the same rate to those points over its more circuitous route, it maintained the same rate to Great Falls, an intermediate point, although no movement of heavy oils to Great Falls was contemplated. Also that as it no longer participates in the 30-cent rate to Helena, Butte, and Anaconda there is no reason why it should maintain that rate to Great Falls, and that to all other points on its line in Montana the rates on heavy oils are the same as on light oils. It urges that the rate of 30 cents to Great Falls on heavy oils is unduly low as compared with the rate of 60 cents on light oils; that from Wyoming to Colorado points the rates on heavy oils range from 70 to 92.5 per cent of the rates on light oils; and that the present rate of 45 cents from Cowley to Great Falls is 75 per cent of the rate on light oils, which is substantially the percentage relationship prescribed in *Mid-continent Oil Rates*, 36 I. C. C., 109.

In *Board of Railroad Commissioners of Montana* v. *C., B. & Q. R. R. Co.*, Docket No. 5448, unreported, we found, among other things, that rates of 60 cents on light oils and 30 cents on heavy oils from Cowley to Great Falls were not unreasonable *per se*. We declined upon the record in that case to prescribe a relationship between light and heavy oils, but suggested to the carriers the advisability of giving further consideration to that question. In the *Mutual Oil Case*, *supra*, but little evidence was introduced as to the rates on heavy oils. We referred in our decision in that case to illustrative rates on heavy oils ranging from 71 to 80 per cent of the rates on light oils. In prescribing a rate of 30 cents from Cowley to Highwood and Coffee Creek we were influenced largely by the relationship between light and heavy oils maintained at Great Falls.

Complainants state that upon investigation they have been unable to find that any shipments of heavy oils have ever been made from Cowley or Greybull to those points and the rates as published to those points do not apply by way of Great Falls.

We are of opinion and find that the 60-cent rate in effect from September 10 to October 29, 1916, inclusive, was unreasonable to the extent that it exceeded the present rate of 45 cents per 100 pounds, which rate we find defendants have justified as reasonable.

We further find that the Burlington by maintaining in connection with the Great Northern higher rates on heavy oils, in carloads, from Cowley and Greybull to Great Falls than it contemporaneously maintains from the same points on like traffic in connection with the Northern Pacific to Helena and Butte, and in connection with the Northern Pacific and the Butte, Anaconda and Pacific to Anaconda, subjects Great Falls to undue prejudice and disadvantage. The Burlington will be required to remove this discrimination.

The Great Falls Gas Company asks reparation on 11 carloads of gas oil which moved over defendants' lines from Cowley to Great Falls between October 13, 1916, and March 31, 1917, inclusive, but there is no evidence that it was damaged in connection with these shipments by reason of the lower rates to Helena, Butte, and Anaconda. Two of the shipments were forwarded prior to October 30, 1916, and the Great Falls Gas Company paid and bore charges thereon at the 60-cent rate. We find that the charges collected on these shipments were unreasonable to the extent that they exceeded those that would have accrued at a rate of 45 cents per 100 pounds; that the Great Falls Gas Company has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record and the Great Falls Gas Company should prepare a statement showing the details of the shipments in accordance with rule V, of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 7964.

JOHNSON SERVICE COMPANY
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted January 17, 1916. Decided May 22, 1918.

1. Rates legally applicable on iron dampers, in crates in less than carloads, from Milwaukee, Wis., to various points in western classification territory found unreasonable to the extent that they exceeded the third-class rates contemporaneously in effect.
2. Third-class rates contemporaneously in effect from Milwaukee to points in Illinois classification territory found to have been reasonable on iron dampers, in crates in less than carloads, from and to those points.
3. The establishment of commodity rates lower than the class basis on dampers, in less than carloads, from Milwaukee to certain Pacific coast points not justified.
4. Rates legally applicable on iron damper closers, in less than carloads, from Milwaukee to points in western, Illinois, Canadian, and official classification territories, not shown to have been unreasonable or unduly prejudicial.
5. Rates on thermostats, in less than carloads, from Milwaukee to points in western and Canadian classification territories not shown to have been unreasonable or unduly prejudicial. First-class rating found to have been reasonable on this article, in less than carloads, from Milwaukee to points in Illinois classification territory.
6. Reparation awarded.

F. M. Elkington for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company and Canadian Pacific Railway Company.

James Stillwell and *R. N. Collyer* for Official Classification Committee; and *R. W. Fyfe* and *W. E. Prendergast* for Western Classification Committee.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

Complainant is a corporation engaged at Milwaukee, Wis., in the manufacture, sale, and installation of temperature and humidity controlling systems. By complaint filed April 30, 1915, as amended, it alleges that defendants' rates on numerous less-than-carload shipments of iron dampers, damper closers, and thermostats from Milwaukee to various points in western, Illinois, and Canadian classification territories, and on numerous less-than-carload shipments of

damper closers from Milwaukee to various points in official classification territory, between April 19, 1913, and March 20, 1915, were unreasonable and unduly prejudicial. Reparation is asked. The claims on the shipments upon which charges were paid prior to May 1, 1913, are barred by the statute of limitations.

The articles are used in connection with systems for regulating the temperature in buildings. The iron dampers are used to regulate the flow of warm air and sometimes of cold air through pipes or flues. They are shipped in crates. They consist of square and round wrought-iron frames, ranging from 1 foot square to 14 feet square or 1 foot to 6 feet in diameter, in which are contained sheet-iron damper blades that rotate on roller bearings or brass axles, called trunnions. These dampers are used either separately or in a series of two or more in such manner as to open or close simultaneously. Under another arrangement two dampers are operated at right angles, the one admitting warm air and the other cold. Apparently complainant desires to ship the right-angled dampers knocked down flat, rendering them the same in bulk for shipping purposes as the single dampers, although it is stated that in many of the shipments dampers were forwarded in the right-angled position. Ordinarily the right-angled dampers are packed from 8 to 20 to the crate. a crate of 12 measuring 24 inches by 48 inches by 60 inches, and weighing 490 pounds, or 12.25 pounds per cubic foot. They range in value from about $2.50 to $4.50 each. Two single square dampers, valued at about $26, packed in a crate 8 inches by 32 inches by 86 inches, weigh 340 pounds, or 26.6 pounds per cubic foot.

The routes of movement are not shown. Charges were collected on the shipments of dampers to points in western classification and Illinois classification territories at rates ranging from third class to one and one-half times first class, and on shipments to points in Canada at rates ranging from second class to third class under the western classification for the factor to Minnesota Transfer, Minn., and from third class to first class beyond under the Canadian classification. Two crates of dampers shipped to Vancouver, Canada, were apparently charged a commodity rate of $1.75 per 100 pounds. This rate is not assailed.

The statements hereinafter made as to the application of ratings in any classification refer only to such shipments as moved under rates governed by that classification or, in the case of shipments under rates governed by two classifications, to that portion of the movement which was under rates governed by the classification named.

It is contended by complainant that reasonable ratings on the shipments of dampers, in crates, to points in all three of the classification

territories mentioned should not have exceeded third class. The western classification provided a rating on flue dampers in less than carloads of third class in barrels or boxes, and second class in crates. It was testified that these ratings were intended to cover only small cast-iron stovepipe dampers and were not properly applicable to the larger and more valuable dampers here under consideration. They contend that as these dampers contain moving parts, which rotate on roller bearings or brass trunnions, they are simple machines, and that the rating legally applicable thereto was the first-class rating on machines, s. u., n. o. i. b. n. We find that the item flue dampers was broad enough to cover these dampers, and the second-class rating provided on shipments in crates was legally applicable. The official and southern classifications provided ratings of third class on iron or steel dampers in less than carloads in boxes, barrels, or crates. Effective August 1, 1917, the western classification was amended to provide a third-class rating on dampers, iron or steel, in barrels, boxes, or crates in less than carloads. This item is in accordance with the recommendations of the Committee on Uniform Classification. The character of these dampers does not justify a higher rating on the shipments, governed by the western classification, in crates than in boxes or barrels, and we accordingly find that the second-class rates legally applicable to these shipments were unreasonable to the extent that they exceeded the third-class rates and are and for the future will be unduly prejudicial to the extent that they exceed or may exceed the third-class rates contemporaneously in effect.

The Canadian classification carried no specific rating on dampers but rated and rates heat controllers or regulators, n. o. s., in less than carloads, third class. We find that this rating was legally applicable on these shipments of dampers and, as it is the rating sought by complainant, any finding as to its reasonableness is unnecessary. The Illinois classification does not provide a specific rating on dampers. It rates furnace parts, iron, in less than carloads, first class, and machinery, n. o. s., securely crated or boxed, in less than carloads, second class. In our opinion neither these nor any of the other ratings provided in the Illinois classification were or are legally applicable on these dampers. In view of the ratings applicable on dampers in the other classifications, and the second-class rating on machinery, n. o. s., above referred to, we find that reasonable rates on these shipments would have been the third-class rates contemporaneously in effect.

Complainant also asks for commodity rates somewhat lower than the class basis on dampers to certain Pacific coast points, but the evidence is insufficient to justify their establishment.

The article manufactured by complainant, which in this report will be referred to as a damper closer, is known by various other names, such as damper motor, draft regulator, and diaphragm attachment. It consists of four principal cast-iron parts: a circular base used to fasten the device to a wall or other support; a ring holding a rubber diaphragm; a saucer which presses against the diaphragm; and a beam to which the saucer is attached by a spring. The beam is also attached to a damper. The device is operated by compressed air, the flow of which is regulated by a thermostat hereinafter described. The compressed air, acting on the diaphragm, causes a movement of the saucer, and this movement is imparted, through the beam, to the damper, causing it to open or close, as the case may be. The size of the damper closers varies with the size of the dampers which they operate. They are shipped, knocked down, usually in boxes, from 10 to 50 to the box. Generally these damper closers range in value from $1.55 to $4.50 each. A box containing 16 of these articles, valued at about $32, weighed about 235 pounds, or 40 pounds per cubic foot. Rates were charged on complainant's shipments of damper closers ranging from third class to double first class to points in western classification territory; from second class to double first class to points in Illinois classification territory; from third class to one and one-half times first class to points in Canadian classification territory; and first and second class to points in official classification territory. None of these classifications contains specific ratings on damper closers. Complainant's damper closer is the medium through which power is applied to the damper and is essentially a machine constituting an integral part of an automatic system of temperature regulation. Machinery, n. o. i. b. n., k. d., in boxes or crates, in less than carloads, was and is rated second class in the western and official classifications, and machinery, n. o. s., crated or boxed, in less than carloads, was and is rated second class in the Illinois classification and first class in the Canadian classification. For defendants it is urged that these ratings were legally applicable on the shipments of damper closers here under consideration, and we so find. On complainant's behalf it is contended that damper closers should be rated not higher than third class in all the classifications. There was cited the western classification second-class rating on less-than-carload shipments of automatic door checks in boxes, which are said to be analogous to damper closers; also numerous items which take various ratings in western and official classifications, but which were, generally speaking, in no way similar to these articles. We find that the rates legally applicable on these shipments of damper closers are not shown to have been unreasonable or unduly prejudicial.

Complainant's thermostats are small instruments which are attached to the wall of a room. They are sensitive to temperature changes and when adjusted to maintain a certain temperature in a room their mechanism automatically regulates the flow of compressed air through pipes to the damper closer in such a manner that the damper is opened or closed, as may be necessary to maintain the temperature desired. They usually have thermometers attached and are shipped in boxes. When large shipments are made the thermometers are removed and forwarded separately.

It was testified that at one time complainant's thermostats sold for prices ranging from $25 to $40, although manufactured at a relatively small cost. It is stated that some thermostats sell for considerably more than these prices. The present price is not shown. Charges were collected on the shipments of thermostats to points in western classification and in Illinois classification territories at double first-class rates; and in Canadian classification territory at one and one-half times first class. Thermostats, in less than carloads, were and are rated double first class in western classification, which is also the rating on thermometers and barometers. No specific rating was or is provided for them in the Illinois or Canadian classification. The one and one-half times first-class rate charged to points in Canadian classification territory were those applicable on scientific instruments, including thermometers and barometers.

Aside from the statement that thermostats, in less than carloads, are rated first class in official and southern classifications, complainant adduced substantially no probative evidence of any unlawfulness in the rates applied on its shipments of thermostats, governed by the western and Canadian classifications, and we find that they are not shown to have been unreasonable or unduly prejudicial. We are unable to find any item in the Illinois classification that may be construed as including thermostats. That classification provides a rating of first class on thermometers and barometers, boxed, in less than carloads, and we find that it would have been a reasonable rating upon the thermostats shipped.

The ratings found reasonable were legally applicable to thermostats. In the case of the Illinois and Canadian classifications the rule of analogy had to be resorted to, resulting in ratings in each instance lower than the specific rating in the western classification. While this rule is a necessary business expedient, ratings applied under it are not always to be taken as criteria. The ratings supporting the rates found on this record not to have been unreasonable reflect a relationship to the ratings applicable in these neighboring territories on kindred articles not here involved and those ratings were developed under varying transportation and commercial prac-

tices which may or may not longer exist. Apparent inequalities in ratings similar to those found in these contiguous territories doubtless exist respecting many other commodities where one defined territory borders upon or overlaps another. This is simply another case forcibly presenting the desirability of a single classification uniform not only as to general rules and commodity descriptions common to all territories but likewise as to ratings.

We find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. This statement should include all outstanding overcharges. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Outstanding undercharges on shipments upon which charges were collected at rates in excess of those herein found reasonable may be waived.

Defendants will be expected to establish rates or ratings on these commodities in conformity with our findings herein. If this is not done within 90 days from the service of this report, the matter may be brought to our attention for such action as may seem appropriate.

No. 8303.

NASHVILLE HARDWOOD FLOORING COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted February 11, 1916. Decided May 22, 1918.

Rates on binder or canvas slats, in carloads and less than carloads, from Nashville, Tenn., to Peoria, East Moline, and Chicago, Ill., and St. Louis, Mo., found to have been and to be unreasonable to the extent that they exceeded or may exceed the rates contemporaneously applicable on carpenters' molding from and to the same points. Reparation awarded.

T. M. Henderson for complainant.

William A. Northcutt and *William Burger* for Louisville & Nashville Railroad Company.

Edward H. Hart for Illinois Central Railroad Company and Nashville, Chattanooga & St. Louis Railway.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged, among other things, in the manufacture and sale of binder or canvas slats at Nashville, Tenn. By complaint, filed September 7, 1915, it alleges that the carload and less-than-carload rates charged for the transportation of binder or canvas slats from Nashville to Peoria, East Moline, and Chicago, Ill., and St. Louis, Mo., are unreasonable and unjustly discriminatory to the extent that they exceed the rates on lumber and lumber products from Nashville to the same points of destination. Reparation is asked on specified shipments moving to East Moline and Peoria between October 26, 1914, and June 11, 1915. Rates are stated in cents per 100 pounds.

Binder or canvas slats, which are manufactured from edgings remaining after lumber is cut into flooring, differ but slightly from carpenters' molding, the edgings of 6 feet or more in length being made into moldings and the shorter lengths into slats. The slats when used are riveted transversely to canvas conveyor belts, and thus enter into the manufacture of agricultural implements.

The southern classification rates lumber, in carloads, class A, minimum 30,000 pounds, and in less than carloads, sixth class; carpenters' molding, not further finished than primed, in boxes, bundles,

or crates, in carloads, sixth class, minimum 30,000 pounds, and in less than carloads, fourth class; and under the caption "parts for agricultural implements," slats or sticks, apron, etc., loose or in packages, in carloads, sixth class, minimum 24,000 pounds, and in less than carloads, in bundles, boxes, or crates, third class. The following table shows the rates applicable on these commodities from and to the points in question during the period the shipments moved and those established subsequent to the hearing and now in effect:

From Nashville to—	Lumber.				Moldings (unfinished).				Canvas slats.			
	Former rates.		Present rates.		Former rates.		Present rates.		Former rates.		Present rates.	
	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Chicago	20	37	20.5	32	20	37	[1] 32	45	28	48	32	56
East Moline	20	40	20.5	34	[2] 20	40	[3] 34	48	30	52	34	60
Peoria	18	37	18.4	32	18	37	[4] 32	45	28	48	32	56
St. Louis	13	32	13.0	28	[5] 13	32	28	40	27	36	28	48

[1] 20.5 cents by way of the Louisville & Nashville Railroad.
[2] 26.5 cents by way of the Louisville & Nashville Railroad.
[3] 30.5 cents by way of the Louisville & Nashville Railroad.
[4] 18.4 cents by way of the Louisville & Nashville Railroad.
[5] 27.5 cents by way of the Louisville & Nashville Railroad.

It is urged for defendants that this case should await the result of the pending general lumber investigation, Docket No. 8131. It is agreed that canvas slats, in carloads, should take whatever carload rates are made applicable to the molding, but it is insisted that commodity rates should not apply to either article in less-than-carload lots, and that it should be left to the several classification committees to fix ratings in the various territories, as carriers other than defendants are equally interested. It is tentatively suggested that new rates should be established on the two commodities, in carloads, approximately 5 per cent higher than the rates on lumber, but no suggestion is made with respect to less-than-carload ratings or rates.

Canvas slats and ordinary carpenters' molding are but different forms of dressed lumber, and are essentially similar from a transportation standpoint.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the respective rates contemporaneously applicable on carpenters' molding from and to the same points. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged to the extent that the charges collected exceeded those that would have accr[illegible] basis herein found reasonable; and that it is entitled to [illegible]h interest. The amount of reparation due can not be [illegible] this record, and complainant should prepare a state-

ment showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

No. 9390.

BAY BROTHERS LUMBER COMPANY
v.
LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL.

Submitted March 28, 1917. Decided May 22, 1918.

Demurrage charges at Faithorn yard, Ill., on a carload of yellow-pine lumber from Trout, La., to Chicago, Ill., found to have been illegally assessed. Refund directed.

M. C. Bay for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant M. C. Bay is engaged in the lumber business at St. Louis, Mo., under the name of Bay Brothers Lumber Company. By complaint, filed November 8, 1916, he alleges that unlawful demurrage charges were collected at Chicago, Ill., on a carload of yellow-pine lumber shipped March 27, 1915, from Trout, La. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, consisting of 48,500 pounds of yellow-pine lumber, was originally consigned to Bay Brothers Lumber Company, Reading, Pa., and subsequently reconsigned en route to Chicago, Erie delivery, Fifty-first street. It moved over the Louisiana & Arkansas Railway to Sibley, La.; Vicksburg, Shreveport & Pacific Railway to Vicksburg, Miss.; Alabama & Vicksburg Railway to Meridian, Miss.; Mobile & Ohio Railroad to East St. Louis, Ill.; Toledo, St. Louis & Western Railway to Humrick, Ill.; and Chicago, Terre Haute & Southeastern Railway to Faithorn yard, Ill., where it arrived April 9. The shipment remained there until May 1, 1915, when it was delivered to the Chicago & Erie Railroad, hereinafter called the Erie, to which it had been sold. Charges were collected in the sum of

$146.54, including a reconsigning charge of $3 and demurrage of $15 which accrued at Faithorn yard. A rate of 26.5 cents was legally applicable plus a reconsigning charge of $5. The correct charges irrespective of the demurrage were therefore $133.53, so that the shipment was undercharged $1.99.

Defendants were not represented at the hearing. Prior to the filing of the complaint, an adjustment of the demurrage charges in question was sought on our informal docket. In answer thereto the Chicago, Terre Haute & Southeastern stated that the Erie does not protect line-haul charges on shipments delivered to it within the Chicago switching limits; that the Chicago, Terre Haute & Southeastern therefore held the shipment at Faithorn yard for payment of the freight charges; that a notice to this effect was addressed to complainant at Chicago, but was returned unclaimed; that, while the car was being held, the Chicago, Terre Haute & Southeastern inquired by telephone of the Erie whether it had any order covering the shipment and was advised that it had no orders and did not know the consignee; and that subsequently the Chicago, Terre Haute & Southeastern received information that the shipment was intended for the storekeeper of the Erie and delivery was made to the latter.

Under a tariff rule carload freight for delivery on a terminal carrier within the Chicago district will not be delivered to a connecting road until all charges are paid or satisfactorily arranged for. The rule provides that notice that the car is held for such charges shall be sent to the consignee and also to the terminal carrier. On behalf of the Erie we were advised that none of its agents recalled an inquiry from the Chicago, Terre Haute & Southeastern with respect to the disposition of this shipment. On April 5, 1915, prior to the arrival of the shipment at Faithorn yard complainant mailed from St. Louis, Mo., instructions to the agent of the Erie at Chicago to deliver the shipment to that carrier's storekeeper at Fifty-first street, Chicago. We find that the detention of this car was due to an error on the part of the carriers. The demurrage tariff of the Chicago, Terre Haute & Southeastern provided that demurrage charges would not be assessed where railroad error prevented proper tender or delivery.

We find that the demurrage charges were illegally collected and should be promptly refunded, with interest. Upon receipt of advice that this has been done, the complaint will be dismissed.

No. 9601.

ANSTED & BURK COMPANY
v.
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted August 24, 1917. Decided May 17, 1918.

Reparation awarded on wheat in carloads from certain points in Ohio, Indiana, Missouri, Kansas, Nebraska, and Oklahoma, stored in transit at Springfield, Ohio, and reshipped to New York, N. Y., for export.

G. M. Freer for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in milling grain at Springfield, Ohio. By complaint filed March 30, 1917, it alleges that the rates charged by defendants on certain carloads of wheat shipped between September 10, 1914, and February 23, 1915, from various points in Ohio, Indiana, Missouri, Kansas, Nebraska, and Oklahoma, to Springfield, there stored and in March, 1915, reshipped to New York, N. Y., for export, were unreasonable and unduly prejudicial. The claim was presented to the Commission informally June 26, 1916. Reparation is asked. Rates are stated in cents per 100 pounds.

A majority of the shipments originated at various points in Ohio and Indiana, on the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, and on the Cincinnati Northern and the Dayton & Union railroads; the remainder, which originated at various points in Missouri, Kansas, Nebraska, and Oklahoma were delivered to the Big Four at either Peoria or Pekin, Ill. All the shipments moved into Springfield over the Big Four; over the same line from that point to Cleveland; and thence over defendants' lines by various routes to New York. Charges were collected, on the shipments originating in Ohio and Indiana at varying combination rates, composed of local rates ranging from 3.7 cents to 8.9 cents from the points of origin to Springfield and 15.2 cents beyond, and on the remainder at combination rates, composed of the rates from the points of origin to Pekin or Peoria and the reshipping rates of 7.5 cents to Springfield and 15.2 cents beyond. At the time the ship-

ments moved from the points of origin defendants maintained from the Ohio points joint through rates on grain to New York, for export, of 15 cents up to December 1, 1914, 16 cents from December 1 to December 13, 1914, 15 cents from December 13, 1914, to January 15, 1915, and 15.8 cents thereafter; from the Indiana points rates 1 cent higher than the rates from the Ohio points; and from Pekin and Peoria reshipping rates of 14.5 cents, 15.5 cents, 14.5 cents, and 15.2 cents during corresponding periods, except that the last-named rate was made effective January 20, 1915. Complainant contends that the charges were unreasonable and unduly prejudicial to the extent that they exceeded, on the shipments originating at the Ohio and Indiana points the charges that would have accrued at the joint through rates contemporaneously in effect from those points to New York, and, on the other shipments, the charges that would have accrued on basis of the local rates from the points of origin to Pekin or Peoria and the through reshipping rates beyond.

At the time these shipments moved defendants' tariffs provided for the application, on wheat milled into flour at Springfield, of the joint through export rates on flour from the points of origin in Ohio and Indiana, or the joint reshipping export rates on flour from Pekin and Peoria on traffic from the west, to New York, plus a transit charge of one-half cent per 100 pounds, minimum $3 per car. Complainant intended to mill this wheat at Springfield, but because of the demand for export wheat created by the European war found it more advantageous to sell it for export. The tariff of the Big Four governing the milling in transit of grain at Springfield included wheat in the column showing the products of which the outbound shipments might consist, this inclusion being intended to cover the practice of forwarding mixed cars of grain and products. In an attempt to bring the shipments within the provisions of the transit tariff complainant, upon the advice of the Big Four's agents at Springfield, loaded a 5-pound sack of flour with each of the outbound shipments. Upon reshipment of the grain from Springfield the charges were collected originally upon the basis of the through rates from the points of origin or the reshipping rates from Pekin or Peoria, plus one-half cent per 100 pounds, minimum $3 per car, but subsequently correction was made to the basis of the combinations of rates above mentioned. On April 14, 1915, defendants established the storage-in-transit arrangement at Springfield upon basis of the through rate from point of origin or rate-basing point to final destination, without additional charge.

At the time these shipments moved and for some time prior thereto storage in transit of grain was permitted at various points on the

Big Four in central freight association territory, including Bellefontaine, Tiffin, and Troy, Ohio, upon the basis of the through export rates to New York, without additional charge for the transit service. Shipments from Troy, a point about 25 miles west of Springfield, to Cleveland, over the Big Four, would pass through Springfield. It was testified that in central freight association territory it is customary to make an additional charge of one-half cent per 100 pounds, minimum $3 per car, on wheat milled in transit, but to make no additional charge on wheat stored in transit, although substantially the same service is rendered.

The additional services performed by the Big Four at Springfield in connection with wheat stored in transit are the same as in connection with wheat milled into flour, and consist of in and out switch movements of about 1 mile each and the unloading of the grain. While the through export rates on flour were, in each instance, 1 cent per 100 pounds higher than the through export rates on wheat prior to January 15, 1915, and after that date, following *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, 1.1 cents per 100 pounds higher, wheat was subject to a considerably higher minimum weight, and loaded much more heavily, than flour.

Counsel for complainant expressed the opinion that under the transit tariff in effect at the time, the through rates, plus the transit charge, were legally applicable, but after a careful consideration of the transit tariff, particularly the provision that the tariff applies only on milling and malting in transit and the definition therein of milling and malting, we are of the opinion that the transit rules did not apply to these shipments.

We find that it was unreasonable to apply on wheat from the originating points in Ohio and Indiana, stored in transit at Springfield, and transported to New York for export, any rates higher than the through export rates contemporaneously applicable from and to the same points, plus one-half cent per 100 pounds, minimum $3 per car; and from the originating points in Missouri, Kansas, Nebraska, and Oklahoma, any rates higher than the rates to Peoria or Pekin and the joint through reshipping export rates contemporaneously applicable from those points to New York, plus one-half cent per 100 pounds, minimum $3 per car. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing as to each

shipment upon which reparation is claimed the date of shipment, car initials and number, points of origin and destination, route, commodity, weight, rate applied, amount of charges and date collected, rates found reasonable and charges applicable thereunder, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. No order for the future is necessary.

No. 9231.

LALANCE & GROSJEAN MANUFACTURING COMPANY
v.
LONG ISLAND RAILROAD COMPANY.

Submitted March 15, 1917. Decided May 17, 1918.

Demurrage charges at Woodhaven, N. Y., on a carload of coal from Remey No. 6 Mine, Pa., found to have been justified. Complaint dismissed.

R. E. Clarke and *L. E. Campbell* for complainant.

F. D. McKenney, *W. C. Carpenter*, and *Dominick B. Griffin* for defendant.

Milton Lisberger for Queens County, N. Y., Board of Trade.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complaint alleges that unreasonable demurrage charges were assessed by defendant at Woodhaven, N. Y., on a carload of coal shipped March 25, 1916, from Remey No. 6 Mine, Pa., and prays for reparation.

The shipment arrived at 3 p. m., April 3, 1916, and was released 6 p. m., April 12, 1916. The 48 hours' free time began 7 a. m., April 4, 1916. Demurrage charges were assessed for three days at $1 per day, and after Sunday, the 9th, at $2 per day for the three remaining days, total $9, which charges were legally applicable. The tariff naming the increased charge of $2 per day after the fifth day, 'uding free time, was issued on short notice under our special

permission, became effective April 1, 1916, and expired June 15, 1916. On December 11, 1916, there was a further increase to $5 per day after the fifth day of detention, which was put in effect by the carriers generally in that territory. The additional $1 after the first five days is alone in issue, and as it represents an increase subsequent to January 1, 1910, the burden of justifying it is upon the defendant.

The shipment is taken merely as representative of a number. The causes for detention were the bunching of cars by the defendant due to congestion and the existence of a strike at complainant's plant.

In justification of the increased charge defendant shows that its action was prompted by the unprecedented need of cars to meet the acute shortage throughout the country generally and to relieve the serious congestion which existed during this period in the vicinity of New York, N. Y.; that from August, 1915, through May, 1916, the number of cars held on its line was steadily increasing; that during the period the tariff was in effect congestion of cars on Long Island was also increasing, even after the increase in demurrage became effective. These charges were permitted to become effective to meet an emergency situation and were necessary to meet the acute congestion which existed on defendant's line. *New York & New Jersey Produce Co.* v. *R. R. Co.*, 49 I. C. C., 93.

We find that the charges assailed have been justified, and the complaint will be dismissed.

An appropriate order will be entered.

No. 9342.

HANLEY & KINSELLA COFFEE & SPICE COMPANY
v.
TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY ET AL.

Submitted May 17, 1917. Decided May 22, 1918.

1. First-class rating under official classification on fennel seed, in less than carloads, not shown to have been or to be unreasonable.
2. Allegations that charges collected on two less-than-carload shipments of fennel seed from New York, N. Y., to St. Louis, Mo., were in excess of the legal charges, not sustained. Complaint dismissed.

G. A. Ryan for complainant.

A. L. Viles for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the seed business at St. Louis, Mo. By complaint filed October 16, 1916, it alleges that the charges collected on two less-than-carload shipments of fennel seed from New York, N. Y., to St. Louis, Mo., March 21 and 28, 1916, were illegal and unreasonable. Reparation is asked and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds.

The shipments, consisting of fennel seed, in bags, weighed 7,305 pounds and 4,305 pounds, respectively. They moved over the Delaware, Lackawanna & Western, the New York, Chicago & St. Louis, and the Toledo, St. Louis & Western railroads. The official classification, which governs, did not specifically rate fennel seed, and charges were collected in the sum of $107.04, at the first-class rate of 92.2 cents applicable to seeds, n. o. i. b. n., in bags, barrels, or boxes. Rule 23 of the official classification provides:

> When articles which are not specifically provided for or included under the heading articles, "n. o. s." (not otherwise specified) are offered for transportation, agents may bill same at the ratings provided for analogous articles, notation to that effect to be made on waybills and will at once report the facts to their general freight department, in order that specific classification may be provided therefor.

It is the contention of complainant that, as fennel seed was not specifically provided for in the classification or included under the

heading articles "n. o. s.," under the above rule, these shipments should have been rated third class, the same as fenugreek seed, in bulk in bags or barrels, in less than carloads, an analogous article. There is no merit in this contention. The terms "not otherwise specified" and "not otherwise indexed by name" are used interchangeably.

We find that the rate charged was legally applicable and that the rating assailed is not shown to have been or to be unreasonable. An order dismissing the complaint will be entered.

No. 9213.

FRED LANG

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted March 15, 1917. Decided May 17, 1918.

Rate on sawed stone in carloads, from Carthage, Mo., to Kansas City, Kans., found to have been unduly prejudicial. Reparation awarded.

William S. McCaull for complainants.

H. G. Herbel for Missouri Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Fred Lang and Ernest F. Dix, copartners, dealing in building stone at Kansas City, Kans., under the name of Kansas City Cut Stone Company. By complaint filed September 15, 1916, as amended, they allege that the charges collected on 18 carloads of sawed stone shipped from Carthage, Mo., to Kansas City between December 4, 1914, and July 13, 1916, both inclusive, were illegal, unreasonable, and unjustly discriminatory. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 1,292,800 pounds, moved over the Missouri Pacific Railway, hereinafter called defendant. Charges were collected at a commodity rate of 6 cents, legally applicable. Contemporaneously a commodity rate of 5 cents applied on sawed stone from Carthage to defendant's Fifth street station in Kansas

City, located on its Kansas City Northwestern division. Complainants' yard is at Third street and Minnesota avenue, intermediate on this traffic to the Fifth street station and to the yard of complainants' competitor at Ninth and Northwestern streets, the latter also on the Kansas City Northwestern division. On March 28, 1910, a commodity rate of 5 cents was established on sawed stone from Carthage, applicable to the yard of complainants and other yards in Kansas City, Mo., and Kansas City, Kans. Effective April 28, 1910, these rates to all points, except on the Kansas City Northwestern division, were increased to 6 cents. The failure to increase the excepted rates was due to an oversight, and on August 21, 1916, these rates were also increased to 6 cents. The former departures from the long-and-short-haul rule of the fourth section were protected by an appropriate application.

We find that the rate assailed was legally applicable and that it is not shown to have been unreasonable, but that it was unduly prejudicial to complainants, in favor of their competitor located beyond on defendant's Kansas City Northwestern division, to which a lower rate applied. We further find that complainants made shipments as described and paid and bore the charges thereon; that they were damaged thereby to the extent that the charges paid exceeded those that would have accrued at the rate contemporaneously applicable to the farther distant point; and that they are entitled to reparation in the sum of $129.28, with interest.

An order for reparation will be entered, but no order for the future is necessary.

No. 9851.[1]

MERIDIAN FERTILIZER FACTORY

v.

BRIMSTONE RAILROAD & CANAL COMPANY ET AL.

Submitted May 25, 1918. Decided June 5, 1918.

Rates on sulphur, in carloads, from Sulphur Mines, La., and from Bryan Mound, Tex., to Hattiesburg and Meridian, Miss., not found to be unreasonable or unduly prejudicial. Complaints dismissed.

C. W. Hayward for complainant.

E. S. Banks for Houston & Brazos Valley Railroad Company, George C. Morris, receiver, and Missouri, Kansas & Texas Railway Company, C. E. Schaff, receiver; *C. W. Owen* for Southern Pacific, Louisiana lines; *Gentry Waldo* for Texas & New Orleans Railroad Company; *W. M. Hough* and *R. C. Fulbright* for Gulf Coast lines; and *R. Walton Moore* and *D. Lynch Younger* for Southern Railway Company, New Orleans & Northeastern Railroad Company, Alabama & Vicksburg Railway Company, Vicksburg, Shreveport & Pacific Railway Company, and Missouri, Kansas & Texas Railway Company.

L. M. Nicolson and *Carl Giessow* for intervener.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

Complainant corporation manufactures fertilizers at Meridian and at Hattiesburg, Miss. One step in its process of manufacture is to make sulphuric acid; prior to the European war it burned pyrites imported from Spain to make this acid; now it burns brimstone or crude sulphur for the same purpose, obtaining the sulphur from Louisiana and Texas. These complaints bring in issue the carload rates on sulphur from Sulphur Mines, La., and from Bryan Mound and Freeport, Tex., to Hattiesburg and Meridian; rates from Sulphur Mines are attacked in No. 9851, the allegation being that they are unreasonable and subject Hattiesburg and Meridian to undue prejudice as compared with rates to more distant points; and

[1] The report also embraces No. 9852, Meridian Fertilizer Factory *v.* Houston & Brazos Valley Railway Company et al.

in No. 9852 rates from Bryan Mound and Freeport are alleged to be unreasonable and reparation is asked. Freeport does not produce sulphur and will not be noticed further. The New Orleans Joint Traffic Bureau intervened in behalf of the commercial interests of New Orleans, La.; the position taken by the intervener being that the present relationship of rates to New Orleans and to Hattiesburg and Meridian should be maintained. Rates are stated herein in cents per 100 pounds.

In this country sulphur in commercial quantities is produced mainly at Sulphur Mines and at Bryan Mound. Sulphur mining in Louisiana antedates the production in Texas and rates from Bryan Mound are made with relation to the rates from Sulphur Mines; rates from the latter point having been made to enable the producers there to compete with imported sulphur at interior points of consumption.

Imported sulphur comes principally from Sicily and Japan, and when sulphur began to move from Louisiana the competition it had to meet was from Sicily. Sulphur from Sicily moved on low ocean rates to the Atlantic coast and thence on low rail rates to the interior. These rates from the ports were used later for the transportation of sulphur from Louisiana and Texas, the producers having established coastwise water lines from points near the mines to eastern ports. *Union Sulphur Co.* v. *B. & O. R. R. Co.*, 39 I. C. C., 349. Rates all rail from Sulphur Mines to Chicago, Ill., St. Louis, and Kansas City, Mo., were made 26 cents to meet the rates from Sicily, and rates to other points were made with relation to these basal rates. Rates to points in Wisconsin were approved in *Pulp & Paper Mfrs. Traffic Asso.* v. *Belt Ry. Co.*, 39 I. C. C., 360.

In the western classification sulphur takes class C rates; in the southern it was rated sixth class prior to April, 1916; it has been included under fertilizers as taking fertilizer rates, or sixth-class rates, in the absence of commodity rates, since that time. The commodity rates here considered are in all instances much lower than the normal classification basis. When sulphur began to move in commercial quantities from Bryan Mound competition of carriers and producers resulted in the establishment of rates from that point with relation to the rates from Sulphur Mines. In part this relation is as follows: To points west of the Indiana-Illinois state line rates from Bryan Mound and from Sulphur Mines are the same; to points east thereof rates from Bryan Mound are 3 cents higher than from Sulphur Mines.

Sulphur finds many uses in the arts. So far as we are here concerned its main use is in the production of sulphuric acid. For this purpose it competes with iron pyrites, a crude mineral containing

approximately 50 per cent of sulphur. Sulphuric acid is made and used in large quantities by paper mills, by fertilizer manufacturers, and by the makers of high explosives; it is obtained by burning pyrites, or crude sulphur, absorbing the fumes so produced in water, and by further treatment which we need not describe. Prior to the European war sulphuric acid producers, not too remote from the Atlantic or Gulf coasts, obtained their sulphuric acid by burning pyrites. Some manufacturers used pyrites mined in this country and others imported their supplies mostly from Spain. Pyrites was worth approximately $4 per gross ton at Spanish ports. Recently these factories have turned to domestic brimstone as a source of sulphuric acid either in place of pyrites or in aid of lean varieties of that mineral. Many fertilizer factories, including the complainant, now make acid not only for their own use but for shipment to munition plants; and the demand for sulphur has become so great that the price which obtained in 1915 and 1916, $20 per gross ton, has risen until it is approximately $45.

Neither sulphur nor sulphuric acid is a fertilizer; sulphuric acid, however, is used to make available the phosphoric content of phosphate rock; and for this reason carriers in the southeast have extended the description of fertilizer materials to include sulphur. West of the Mississippi River this has not been done.

The rate situation out of which these complaints arose is shown in the following table:

	Distance.	Rate.	Revenue per ton-mile.
From Sulphur Mines, La., to—	*Miles.*	*Cents.*	*Mills.*
Hattiesburg, Miss.	349	16.65	9.54
Meridian, Miss.	434	20.15	9.28
New Orleans, La.[1]	232	11	9.48
New Orleans, La.[2]	232	6.03	5.19
Mobile, Ala.	371	14	7.54
Montgomery, Ala.	550	22.25	8.09
Chattanooga, Tenn.	730	24.50	6.71
From Bryan Mound, Tex., to—			
Hattiesburg, Miss.	544	19.65	7.22
Meridian, Miss.	629	24.15	7.68
New Orleans, La.	426	15.00	7.04
Birmingham, Ala.[3]	782	29.25	7.49

[1] Fertilizer rates New Orleans to Hattiesburg 7 cents, to Meridian 9 cents. Import rates on pyrites New Orleans to Hattiesburg 5.5 cents, to Meridian 6 cents.
[2] Proportional rate applicable only to export or coastwise movements. Handling charges at New Orleans 1.34 cents in addition.
[3] See *Powder Company* v. *H. & B. V. R. R. Co.*, 47 I. C. C., 221.

These rates are improperly aligned and the carriers do not attempt to defend the present adjustment; they assert, however, that all these rates are unduly low and say that within a short time they expect to apply for leave to increase all rates on sulphur from Sulphur Mines and from Bryan Mound. The adjustment formerly

in effect resulted in rates from Bryan Mound 3 cents higher than from Sulphur Mines, and this difference in the rates is alleged to have been too small in that it is the differential which properly applies to more distant points east of the Indiana-Illinois state line. The present difference of 4 cents in the rates to Meridian is explained as resulting from a recent reduction of 1 cent in the rates from Sulphur Mines, without changing the rates from Bryan Mound. The carriers admit that the rates to Meridian from both Sulphur Mines and Bryan Mound are improper, in that they exceed the combinations of rates on New Orleans, but they deny that these rates are unreasonable. They say that, based upon the rates to and from New Orleans, the rates to Meridian should now be 20 cents from Sulphur Mines and 24 cents from Bryan Mound; and that on the same basis rates to Hattiesburg should be 18 cents from Sulphur Mines and 22 cents from Bryan Mound.

The complaint asks for rates to Hattiesburg and to Meridian, based upon the proportional rates from Sulphur Mines to New Orleans, for export or for coastwise movement, plus the proportional rates from New Orleans to those destinations, applicable to imported pyrites. It is unnecessary to consider this demand further than to say that, in view of the rates established to Hattiesburg, it is not illogical. The carriers have established from Sulphur Mines to Hattiesburg a rate composed of the former rate of 11.15 cents to New Orleans plus the import rate of 5.5 cents on pyrites from New Orleans to destination. This basis, they now assert, was adopted in error; however that may be, both the rate and its method of construction give color to complainant's demand for the application of proportional export and import rates in the construction of joint rates to both Hattiesburg and Meridian. Nevertheless it does not follow that the rates to Hattiesburg or the method of their construction are proper, or reasonable, or that they should be approved or prescribed by this Commission.

So far as this record discloses, no traffic has ever moved from Sulphur Mines to either Hattiesburg or Meridian; there is no showing that the rate from Sulphur Mines to Hattiesburg is unreasonable or unduly prejudicial; but the carriers should cure the impropriety in the rate from Sulphur Mines to Meridian. The combination of rates concurrently maintained to and from New Orleans is, they allege, the proper basis. In constructing through rates they should observe the authority contained in Fourth Section Order No. 340, General No. 6, issued October 10, 1911, and still in effect.

From Bryan Mound the complainant has received at Meridian 33 carloads, and at Hattiesburg 2 carloads. The route of movement to Hattiesburg is not indicated in the record; all the shipments to

Meridian moved over the Houston & Brazos Valley, from Bryan Mound to Anchor, Tex., a distance of 24 miles, thence over the International & Great Northern to Houston, Tex., thence by the Southern Pacific Lines to Shreveport, La., thence by the Vicksburg, Shreveport & Pacific to Vicksburg, Miss., and thence by the Alabama & Vicksburg to destination. By this route the distance is about 626 miles. Out of the joint rate the Houston & Brazos Valley Railway receives for its part of the haul from Bryan Mound to Anchor, an arbitrary of 4.5 cents, and this arbitrary is substantially the same as it receives on its traffic to all destinations. The balance of the rate, 19.65 cents, the carriers contend, is entirely too low, as it yields a ton-mile revenue of less than 6.6 mills. Putting that contention aside we may examine the arbitrary accorded to the Houston & Brazos Valley from the standpoint of the financial returns received by it.

The Houston & Brazos Valley Railway has about 30 miles of trackage, and extends from Bryan Mound through Freeport and Velasco to Angleton, all in Texas, where it connects with the St. Louis, Brownsville & Mexico Railway, and to Anchor, where it connects with the International & Great Northern Railway. This little road was built to move sulphur from Bryan Mound; it has no equipment and pays per diem on all cars furnished by its connections; 90 per cent of its traffic is crude sulphur, and cars to carry sulphur are hauled empty southbound from Anchor and Angleton. Its roadbed lies in a flat country, close to the Brazos River, and is subject to frequent inundations; its bridges and tracks have been repeatedly destroyed by storms; and the result of its operations up to June 30, 1916, showed serious losses. Since that time, probably owing to the increased demand for sulphur, its operations have resulted in earnings of something over $3,000 per mile per year. These earnings have not been sufficient to balance the accumulated deficit of former years, and probably will not continue much longer than the present war.

Sulphur at the mine, normally and under the abnormal conditions due to the war, is worth approximately twenty times the value of bituminous coal at the mine. The carriers compare the revenues received by them beyond Angleton and Anchor, with the revenues which they receive for the haulage of bituminous coal and coke from Alabama mines to Texas points. From the standpoint of ton-mile earnings there is little difference between these rates, although coal moves in enormous volume, generally in open cars, and sulphur moves in smaller volume and must be provided with closed cars which are placarded "inflammable." It is not necessary further to prolong this report in the consideration of all of the contentions of the parties.

The Commission should find that the rates from Bryan Mound are not shown to be unreasonable, and the complaints should be dismissed. As before stated, the rates to Meridian are improper in that they exceed by 0.15 cent the combination on New Orleans. The carriers will be expected to and must correct these rates.

CLARK, *Commissioner:*

The foregoing is the report proposed by the examiner and served upon the parties to the proceeding. No exceptions thereto were filed. The report and conclusions proposed by the examiner are approved and adopted as the report and conclusions of the Commission, and an order will be entered accordingly.

No. 9972.

PROPOSED INCREASE IN EXPRESS RATES.

FIFTEENTH SECTION APPLICATION No. 1790.

Submitted December 18, 1917. Decided June 17, 1918.

Application of the express companies for a 10 per cent increase in interstate rates granted.

T. B. Harrison for Adams and American express companies; *Charles W. Stockton* and *Branch P. Kerfoot* for Wells Fargo & Company; and *Robert C. Alston* for Southern Express Company.

J. H. Henderson for Board of Railroad Commissioners of the State of Iowa; *Thomas L. Hall*, *Hugh Lancaster*, and *U. G. Powell* for Nebraska State Railway Commission; *Thomas Yapp* for Railroad and Warehouse Commission of Minnesota; *J. Prince Webster* for Georgia Railroad Commission; *D. C. McMullen* and *G. A. Engh* for Railroad Commissioners of Florida; *O. O. Calderhead* for Public Service Commission of Washington; and *Frank Harper* for Public Service Commission of Maryland.

William A. Wimbish for various shipping interests of Atlanta, Ga., Montgomery, Ala., and Nashville, Tenn.; *M. M. Caskie* for Chamber of Commerce, Montgomery, Ala.; and *J. C. Lincoln* for Merchants Association of New York.

Report of the Commission.

Clark, *Commissioner:*

This proceeding concerns an application in behalf of the express companies in the United States for permission to increase all interstate express rates by 10 per cent.

Wells Fargo & Company and the Adams, American, and Southern express companies handle more than 95 per cent of the total express traffic. The evidence in their behalf shows that many of the conditions which have operated to reduce the net earnings of the railroads have affected the express companies in like manner; that emergencies have made necessary the shipment of articles by express that heretofore have moved by freight, and for the handling of which the express companies are not adequately equipped; that the lack of

facilities to handle an unexpected and unprecedented volume of traffic requiring expedited movement has resulted in serious congestion; that the increased traffic and the attraction of employees to other lines of business have necessitated the employment of many inexperienced men and the use of unsuitable equipment; and that under these conditions the service has deteriorated and the ratio of operating expenses to revenues has increased to such an extent that their aggregate earnings on domestic traffic under the present rates are insufficient to meet operating expenses.

By far the largest item of operating expense, after deducting payments for express privileges, is that of labor, and there have been very heavy increases in labor costs. Charges for maintenance, and stable and garage expenses have largely increased. So also have payments on account of loss and damage claims because of the congestion, the shortage of suitable equipment, the careless or inefficient work of inexperienced employees, and the increased value of the shipments. It is unnecessary to discuss in detail these and various other conditions shown of record. Their existence is conceded; the necessity for corrective measures is obvious and imperative; and it is urged that relief from their untoward effect upon the applicants' service and revenues can be obtained only by increasing the rates, inasmuch as all possibilities in the way of operating economies have been exhausted. We will, therefore, proceed to consider the evidence relating to the financial conditions of these carriers and the probable effect upon their revenues of the proposed increased rates.

In the appendix to this report will be found comparisons of revenues and expenses of the domestic transportation operations of the four principal companies, which were filed as exhibits. At the time of the hearing statistics for only the first seven months of 1917 were available. The term "operating revenue," as used herein, refers to the amount remaining after deducting payments for express privileges. These payments range from 45 to 55 per cent of the gross transportation revenues and average a fraction more than 50 per cent.

WELLS FARGO & COMPANY.

Wells Fargo & Company's operating revenue increased from $12,945,464 for the first seven months of 1916 to $15,514,000 for the same period of 1917, but its operating income decreased from $1,238,761 to $137,250. Substantial deficits occurred in January, February, June, and July, 1917. Had all its rates on state and interstate traffic been 10 per cent higher than they were its operating income for the period would have been $1,445,847.

AMERICAN EXPRESS COMPANY.

The American Express Company's operating revenue increased from $17,293,759 for the first seven months of 1916 to $20,968,190 for the same period of 1917, but its operating income decreased from $1,080,538 to a deficit of $96,796. Deficits occurred in the same four months as in the case of Wells Fargo & Company. Had the rates of the American Express Company on all traffic been 10 per cent higher than they were its operating income for the period would have been $1,725,191.

ADAMS EXPRESS COMPANY.

The Adams Express Company's operating revenue increased from $12,838,524 for the first seven months of 1916 to $14,886,907 for the same period of 1917, but its operating income decreased from $546,914 to a deficit of $1,173,188. March was the only one of the seven months of 1917 in which it did not operate at a deficit. Had all its rates been 10 per cent higher the operating income for the period would have been $209,521. The net operating results of the Adams Express Company for the first seven months of 1917 were much more unfavorable than were those of any other company. This was due in part at least to the fact that the greater proportion of its business is in the east and on lines where the unusual conditions were earlier encountered and more severely felt.

SOUTHERN EXPRESS COMPANY.

The Southern Express Company's operating revenue increased from $4,774,852 for the first seven months of 1916 to $5,377,990 for the same period of 1917. If there be included as a deduction from net operating revenue the sum of $150,000 which this company estimated it must pay as normal income tax and war tax, its operating income for the first seven months of 1917 was $624,206, or $185,274 less than for the same period of 1916. The exhibits filed by this company indicate a deficit of $35,003 for the month of July, but this amount was shown to be $28,571 more than it should have been, because the tax item of $150,000 was apportioned only to the months of May, June, and July instead of to the entire seven months' period. Without deducting these taxes, the Southern Express Company had an operating income for July of $14,996 and of $774,206 for the seven months' period. Had all its rates been 10 per cent higher than they were its operating income for the period, with war taxes deducted, would have been $1,063,670.

The data submitted by all the applicants include deductions representing normal income tax and war tax, but except for the Southern

Express Company the amounts are so small as not materially to affect the result.

THE FOUR COMPANIES COLLECTIVELY.

Considering the four companies as a unit, their operating revenue from domestic transportation was $47,852,600 for the first seven months of 1916 and $56,747,089 for the same period of 1917, but their operating income decreased from $3,675,694 to a deficit of $508,527. The deficit would have been approximately $321,776 but for the inclusion of income and war taxes. Deficits occurred in the months of January, February, June, and July. Had all the rates of the four companies been 10 per cent higher, their operating income for the period would have been $4,444,231.

OTHER EXPRESS COMPANIES.

The smaller express companies, except the Canadian, showed substantial increases in operating income. The figures for the first seven months of 1916 and 1917, which include the net income derived from their foreign and nontransportation business, are stated below:

	Great Northern.	Northern.	Western.	Canadian.
1917	$147,470	$177,377	$55,864	$77,900
1916	91,796	137,902	34,752	140,422

THE SITUATION AS OF DECEMBER 31, 1917.

During the remaining months of 1917, and for that year as a whole, reports filed with the Commission show that the net operating results were much more unfavorable than during the seven months' period ended July 31. The following statement, compiled from those reports, summarizes the operating revenues and expenses of all the express companies for the month of December, and for the calendar year 1917, and compares them with the corresponding periods of the preceding year:

Operating revenues and expenses of express companies, summary for December, 1917.

FOR THE MONTH OF DECEMBER.

	1917	1916	1917	1916	1917	1916
	Adams Express Co.		American Express Co.		Canadian Express Co.	
Mileage of all lines covered, miles	48,602.36	45,306.96	73,289.03	73,464.92	12,447.14	12,049.93
Charges for transportation	$4,771,237	$4,500,415	$6,931,373	$6,131,606	$408,561	$414,361
Express privileges—Dr.	2,411,184	2,222,177	3,425,842	3,050,874	196,968	199,493
Operations other than transportation	45,356	47,867	230,233	309,877	15,272	6,899
Total operating revenues	2,405,409	2,326,105	3,735,764	3,390,609	226,865	221,767
Operating expenses	3,234,160	2,502,158	4,031,023	3,284,794	244,192	188,940
Net operating revenue	[1] 828,750	[1] 176,053	[1] 295,259	105,814	[1] 17,327	32,826
Uncollectible revenue from transportation	2,079	1,214	2,969	1,941	75	6
Express taxes	43,599	11,526	65,168	38,508	11,461	4,700
Operating income	[1] 874,429	[1] 188,794	[1] 363,397	65,364	[1] 28,864	28,119
	Great Northern Express Co.		Northern Express Co.		Southern Express Co.	
Mileage of all lines covered, miles	9,095.25	9,957.29	8,290.39	8,294.45	34,919.60	34,774.60
Charges for transportation	$300,271	$342,324	$267,611	$288,886	$1,878,705	$2,131,389
Express privileges—Dr.	183,583	210,866	145,578	156,131	978,332	1,062,062
Operations other than transportation	4,375	5,353	3,970	4,559	32,978	45,933
Total operating revenues	121,063	126,812	126,003	137,314	933,350	1,115,270
Operating expenses	104,670	104,312	118,797	102,654	868,876	816,538
Net operating revenue	16,393	32,499	7,206	34,660	64,473	298,732
Uncollectible revenue from transportation	8	30	1,020	20	142	120
Express taxes	43,597	7,552	6,416	3,992	77,269	16,278
Operating income	[1] 27,212	24,917	[1] 229	30,646	[1] 12,937	282,333
	Wells Fargo & Co.		Western Express Co.		Total for companies named.	
Mileage of all lines covered, miles	115,474.45	107,071.58	5,236.90	5,253.32	307,355.12	296,173.07
Charges for transportation	$5,632,396	$5,147,954	$138,412	$146,204	$20,328,559	$19,103,144
Express privileges—Dr.	2,938,967	2,644,283	68,563	67,436	10,349,041	9,613,317
Operations other than transportation	110,230	110,389	4,012	4,371	446,431	535,202
Total operating revenues	2,803,649	2,614,010	73,842	83,139	10,425,949	10,025,029
Operating expenses	2,891,270	2,375,047	73,482	69,113	11,566,475	9,443,560
Net operating revenue	[1] 87,621	238,962	359	14,026	[1] 1,140,526	581,469
Uncollectible revenue from transportation	1,445	2,695	28	8	7,768	6,038
Express taxes	33,391	47,221	2,840	2,394	283,745	132,175
Operating income	[1] 122,457	189,045	[1] 2,510	11,623	[1] 1,432,039	443,256

[1] Deficit or loss.

FOR THE TWELVE MONTHS ENDED WITH DECEMBER.

	1917	1916	1917	1916	1917	1916
	Adams Express Co.		American Express Co.		Canadian Express Co.	
Charges for transportation	$53,730,035	$45,893,923	$75,920,831	$63,413,452	$4,951,768	$4,259,011
Express privileges—Dr	26,707,164	22,413,455	37,715,796	31,407,984	2,490,506	2,189,848
Operations other than transportation	630,830	603,527	3,894,238	3,233,224	152,254	125,216
Total operating revenues	27,653,700	24,083,995	42,099,273	35,238,692	2,613,516	2,194,379
Operating expenses	30,476,896	23,025,979	40,831,309	32,355,941	2,460,568	1,887,758
Net operating revenue	[1] 2,823,195	1,058,016	1,267,963	2,882,750	152,947	306,621
Uncollectible revenue from transportation	20,744	8,034	26,468	13,789	1,816	515
Express taxes	293,247	251,056	562,310	550,235	88,461	53,945
Operating income	[1] 3,137,187	798,924	679,184	2,318,725	62,669	252,160
	Great Northern Express Co.		Northern Express Co.		Southern Express Co.	
Charges for transportation	$3,808,456	$3,622,495	$3,615,043	$3,243,148	$19,300,341	$18,039,247
Express privileges—Dr	2,314,182	2,213,735	1,965,486	1,760,005	9,924,641	9,251,998
Operations other than transportation	69,879	62,195	52,389	49,602	395,746	403,725
Total operating revenues	1,564,153	1,470,955	1,701,946	1,532,745	9,771,447	9,190,974
Operating expenses	1,232,255	1,142,941	1,338,189	1,138,230	8,170,054	7,192,510
Net operating revenue	331,898	328,014	363,757	394,515	1,601,392	1,998,464
Uncollectible revenue from transportation	176	136	1,618	383	2,219	1,605
Express taxes	109,678	62,280	72,416	63,922	649,952	180,789
Operating income	222,042	265,598	289,723	330,209	949,219	1,816,069
	Wells Fargo & Co.		Western Express Co.		Total for companies named.	
Charges for transportation	$59,813,391	$50,403,436	$1,721,821	$1,545,441	$222,861,689	$190,420,157
Express privileges—Dr	31,586,319	25,854,218	830,962	756,438	113,535,059	95,847,685
Operations other than transportation	1,351,269	1,191,925	46,892	45,475	6,593,500	5,714,894
Total operating revenues	29,578,340	25,741,143	937,751	834,478	115,920,130	100,287,366
Operating expenses	28,397,532	22,212,796	814,248	716,474	113,721,056	89,672,632
Net operating revenue	1,180,808	3,528,347	123,503	118,003	2,199,074	10,614,734
Uncollectible revenue from transportation	17,542	16,420	170	81	70,757	40,967
Express taxes	511,849	468,532	24,705	16,929	2,312,622	1,647,692
Operating income	651,416	3,043,393	98,627	100,992	[1] 184,305	8,926,075

[1] Deficit or loss.

Excluding war taxes and the net income derived from the foreign and nontransportation business, it is estimated that the net operating results from the domestic traffic of the four principal companies were as follows:

Operating income or deficit.

	August to December, 1917.	Calendar year 1917.
Adams	[1] $2,237,697	[1] $3,410,885
American	[1] 183,764	[1] 280,560
Southern	345,519	1,119,726
Wells Fargo	[1] 117,707	56,294
Total	[1] 2,193,649	[1] 2,515,425

[1] Deficit.

CONCLUSIONS.

It is apparent that the Adams, the American, and the Wells Fargo companies, which together transact about 86 per cent of the total express business, and that the smaller companies, in a somewhat lesser degree, require the additional revenue which the proposed increased rates would yield to enable them to afford adequate service and to meet the constantly increasing costs of operation. Accepting as approximately correct the estimated additional revenue which the increased rates will yield, it is far from certain that, under a continuance of present separate operation, it would be sufficient to offset the increases in wages and other operating costs.

The protests against the proposed increased rates are comparatively few and relate principally to those of the Southern and the smaller express companies. It is unnecessary, however, to particularly consider the revenues or rates of each individual carrier. In the former proceedings, 24 I. C. C., 380; 28 I. C. C., 131; and 35 I. C. C., 3, these express companies were treated substantially as a unit. And, as is well known, they have recently been merged into one company, which will be operated as an agency of the government under a contract with the United States Railroad Administration.

Upon all the facts of record we conclude and find that the application should be granted. An order will be entered accordingly.

AITCHISON, *Commissioner*, dissenting:

The express rate structure now maintained by the applicants is the result of a number of orders of this Commission, made in former years. As is well known, the whole country was divided into five zones, and each zone into blocks and sub-blocks. Within each zone the basis of rates is generally the same; but as between the zones, the higher basis is found in the south and west.

The zone rates were originally adjusted by the Commission with regard to the approximate relative cost of service in the various sections of the country:

What is said in the majority report as to the increased cost of performing express service is undeniable. But it is clear from the record that the increases in costs are far heavier in zone 1, which embraces roughly the territory east of the Mississippi and north of the Ohio and Potomac rivers. The density of traffic and population is greater and the general rate basis is lower in this zone than elsewhere in the country. The added costs are much greater on less-than-carload than on carload traffic, and on small than on large packages or articles.

It is entirely feasible to adjust the express schedules so that the burden of these additional costs shall be borne in the sections where

such added costs are incurred, and by the kinds of traffic which have caused the increased expense; but this is not done. Instead, the burden is laid upon all kinds of traffic, and is imposed in relatively heavier degree upon localities already carrying the highest rates and which are not responsible for the greatest part of the added financial burden of these carriers. Conceding the general propriety of an increase, it should be made in such a manner that the increased costs should be borne where and by whom incurred. This principle does not find expression in a country-wide flat percentage increase, and the result must be a schedule which imposes unreasonable rates upon some particular descriptions of traffic and subjects particular localities and traffic to undue prejudice, in violation of the act to regulate commerce. Because the majority report does not distribute the needed increase in a fairly ratable manner, I am impelled to dissent from the conclusion reached.

APPENDIX 1.

Adams Express Company, Southern Express Company, American Express Company, and Wells Fargo & Company.—*Comparison of revenues and expenses of all operations for seven months ended July 31, 1917, and seven months ended July 31, 1916.*

Line No.		7 months ended July 31, 1917.		7 months ended July 31, 1916.		Increase or decrease.		Aggregate operating results as they would have been for the 7 months of 1917 if each company's individual cost ratios had remained the same as for the 7 months of 1916 (see col. 4 of each company's statement).	Aggregate amount of changes, due to the increased ratio of cost to gross revenue of each company, resulting from changed operating conditions (see difference between cols. 1 and 7 on each company's statement).
		Amount. (Col. 1.)	Per cent of gross revenue. (Col. 2.)	Amount. (Col. 3.)	Per cent of gross revenue. (Col. 4.)	Amount. (Col. 5.)	Per cent. (Col. 6.)	(Col. 7.)	(Col. 8.)
1	Gross revenue	$119,844,927.73		$99,688,357.25		$20,156,570.48	20.22	$119,844,927.73	
2	Express privileges	59,167,584.33	49.37	48,507,741.80	48.66	10,659,842.53	21.98	58,298,597.01	$866,987.32
3	Operating revenue	60,677,343.40	50.63	51,180,615.45	51.34	9,496,727.95	18.56	61,546,330.72	[1] 868,987.32
4	Operating expenses								
5	Maintenance	3,591,485.71	3.00	2,717,572.18	2.73	873,913.53	32.16	3,270,586.21	320,899.50
6	Labor	37,922,675.91	31.64	30,495,103.84	30.59	7,427,572.07	24.36	36,664,672.83	1,258,003.08
7	Stable and garage supplies and expenses	3,902,467.97	3.26	2,986,661.55	3.00	915,806.41	30.66	3,600,380.88	302,087.08
8	Stationery and printing	1,316,034.68	1.10	912,114.09	.92	403,920.57	44.28	1,090,902.81	225,131.85
9	Loss and damage (not including labor)	3,977,920.10	3.32	2,144,311.16	2.15	1,833,608.94	85.51	2,573,215.56	1,404,704.54
10	Rent of local offices	1,738,363.94	1.45	1,606,379.64	1.61	131,984.30	8.22	1,935,810.11	[1] 197,446.17
11	Drayage	1,641,516.62	1.37	1,083,405.96	1.09	558,110.66	51.51	1,306,177.33	335,339.29
12	General and traffic (other than labor and stationery and printing)	2,310,399.06	1.93	1,596,429.35	1.60	713,969.71	44.72	1,930,063.03	380,336.03
13	Other expenses	2,448,800.20	2.04	2,035,823.23	2.03	412,976.97	20.29	2,460,363.60	[1] 11,563.40
14	Total operating expenses	58,849,664.16	49.11	45,577,801.00	45.72	13,271,863.16	29.12	54,832,172.36	4,017,491.80
15	Net operating revenue	1,827,679.24	1.52	5,602,814.45	5.62	[1] 3,775,135.21	[1] 67.38	6,714,158.36	[1] 4,886,479.12
16	Uncollectible revenue from transportation	35,908.93	.03	20,599.58	.02	15,309.35	74.32	24,196.20	11,712.73
17	Express taxes	1,058,042.43	.88	825,659.38	.83	232,383.05	28.15	994,146.27	63,896.16
18	Total deductions	1,093,951.36	.91	846,258.96	.85	247,692.40	29.27	1,018,342.41	75,608.89
19	Operating income	733,727.88	.61	4,756,555.49	4.77	[1] 4,022,827.61	[1] 84.57	5,695,815.89	[1] 4,962,088.01

[1] Indicates decrease or deficit.

APPENDIX 2.

ADAMS EXPRESS COMPANY, SOUTHERN EXPRESS COMPANY, AMERICAN EXPRESS COMPANY, AND WELLS FARGO & COMPANY.—*Comparison of revenues and expenses of domestic express all operations for seven months ended July 31, 1917, and seven months ended July 31, 1916.*

Line No.		7 months ended July 31, 1917.		7 months ended July 31, 1916.		Increase or decrease.		Aggregate operating results as they would have been for the 7 months of 1917 if each company's individual cost ratios had remained the same as for the 7 months of 1916 (see col. 4 of each company's statement).	Aggregate amount of changes, due to the increased ratio of cost to gross revenue of each company, resulting from changed operating conditions (see difference between cols. 1 and 7 on each company's statement).
		Amount.	Per cent of gross revenue.	Amount.	Per cent of gross revenue.	Amount.	Per cent.		
		(Col. 1.)	(Col. 2.)	(Col. 3.)	(Col. 4.)	(Col. 5.)	(Col. 6.)	(Col. 7.)	(Col. 8.)
1	Gross revenue	$115,864,340.35	.....	$96,260,342.58	.....	$19,603,997.77	20.37	$115,864,340.35	.....
2	Express privileges	59,117,251.33	51.02	48,407,741.80	50.29	10,709,509.53	22.12	58,260,552.84	$856,698.49
3	Operating revenue	56,747,089.02	48.98	47,852,600.78	49.71	8,894,488.24	18.59	57,603,787.51	[1] 856,698.49
4	Total operating expenses	56,261,522.96	48.56	43,411,080.23	45.10	12,850,442.73	29.60	52,283,707.39	3,977,815.57
5	Net operating revenue	485,566.06	.42	4,441,520.55	4.61	[1] 3,955,954.49	[1] 89.07	5,320,080.12	[1] 4,834,514.06
6	Uncollectible revenue from transportation	35,832.13	.03	20,378.51	.02	15,453.62	75.83	24,316.98	11,515.20
7	Express taxes	958,261.83	.83	745,447.23	.77	212,814.60	28.55	897,267.24	60,994.59
8	Total deductions	994,093.96	.86	765,825.74	.79	228,268.22	29.81	921,584.17	72,509.79
9	Operation income	[1] 508,527.90	[1] .44	3,675,694.81	3.82	[1] 4,184,222.71	[1] 113.83	4,398,495.95	[1] 4,907,023.85

[1] Indicates decrease or deficit.

APPENDIX 3.

ADAMS EXPRESS COMPANY, SOUTHERN EXPRESS COMPANY, AMERICAN EXPRESS COMPANY, AND WELLS FARGO & COMPANY.—*Statement showing ratios of operating income to gross express transportation revenues (domestic) by months from January, 1915, to July, 1917, inclusive.*

Line No.		Charges for transportation (domestic).	Operating income from transportation (domestic).	Ratio of income to charges.
		(Col. 1.)	(Col. 2.)	(Col. 3.)
	1915.			
1	January	99,032,483.67	[1] 3648,256.31	[1] 7.18
2	February	9,196,036.08	[1] 503,256.94	[1] 5.47
3	March	11,416,480.01	465,808.33	4.08
4	April	11,600,573.17	548,243.41	4.78
5	May	12,074,033.94	606,266.46	5.12
6	June	12,174,879.27	551,127.06	4.53
7	July	11,871,465.58	457,484.14	3.85
8	Total for 7 months	77,365,951.72	1,477,416.15	1.91
9	August	11,565,625.24	276,233.24	2.39
10	September	13,197,323.26	832,072.09	6.30
11	October	13,543,922.89	949,016.52	6.43
12	November	13,392,438.88	861,175.34	6.43
13	December	15,732,279.51	1,343,745.44	8.54
14	Total for calendar year 1915	144,797,741.50	5,739,658.78	3.96
	1916.			
15	January	11,313,357.22	[1] 16,340.07	[1] .14
16	February	11,874,869.01	220,569.29	1.86
17	March	14,465,871.77	862,925.66	3.37
18	April	14,651,119.95	849,999.65	5.27
19	May	15,112,862.97	784,775.27	5.19
20	June	14,592,219.84	470,486.64	3.22
21	July	14,250,241.82	503,278.37	3.53
22	Total for 7 months	96,260,342.58	3,675,694.81	3.82
23	August	14,904,142.34	677,378.49	4.54
24	September	15,726,916.15	779,763.41	4.96
25	October	16,240,786.75	683,097.92	4.21
26	November	16,082,720.52	511,203.96	3.18
27	December	17,789,034.25	281,960.61	1.59
28	Total for calendar year 1916	177,003 42.59	6,610,099.20	3.73
	1917.			
29	January	14,645,324.04	[1] 289,793.79	[1] 1.98
30	February	14,542,524.34	[1] 323,158.10	[1] 2.22
31	March	18,168,101.52	773,864.81	4.26
32	April	17,134,195.96	150,549.65	.88
33	May	17,913,878.97	104,672.94	.58
34	June	17,181,629.40	[1] 250,391.74	[1] 1.46
35	July	16,278,686.12	[1] 674,271.67	[1] 4.14
36	Total for 7 months	115,864,340.35	[1] 508,527.90	[1] .44

[1] Indicates decrease or deficit.

APPENDIX 4.

ADAMS EXPRESS COMPANY, SOUTHERN EXPRESS COMPANY, AMERICAN EXPRESS COMPANY, AND WELLS FARGO & COMPANY.—*Statement showing effect on proposed increase in rates as applied to domestic transportation operations for seven months ended July 31, 1917.*

Line No.	Classification.	Actual operating results Jan. 1 to July 31 (inclusive), 1917.	Interstate.		Results, including 10 per cent increase on interstate (col. 1 plus col. 3).
			Total interstate.	Changes through 10 per cent increase in interstate rates.	
		(Col. 1.)	(Col. 2.)	(Col. 3.)	(Col. 4.)
1	Gross revenue	$115,864,340.35	$80,060,832.73	$8,006,083.27	$123,870,423.62
2	Express privileges	59,117,251.33	40,819,023.59	4,081,902.35	63,199,153.68
3	Operating revenue	56,747,089.02	39,241,809.14	3,924,180.92	60,671,269.94
4	Total operating expenses	56,261,522.96		[1] 309,304.10	56,570,827.06
5	Net operating revenue	485,566.06		3,614,876.82	4,100,442.88
6	Uncollectible revenue from transportation	35,832.13			35,832.13
7	Express taxes	958,261.83		151,343.93	1,109,605.76
8	Total deductions	994,093.96		151,343.93	1,145,437.89
9	Operating income	[2] 508,527.90		3,463,532.89	2,955,004.99

Line No.	Classification.	Intrastate.		Changes through 10 per cent increase in all rates (col. 3 plus col. 6).	Results, including 10 per cent increase in all rates (col. 1 plus col. 7).
		Total intrastate.	Changes through 10 per cent increase in intrastate rates.		
		(Co. 5.)	(Col. 6.)	(Col. 7.)	(Col. 8.)
1	Gross revenue	$35,808,507.62	$3,580,350.75	$11,586,434.02	$127,450,774.37
2	Express privileges	18,298,227.74	1,829,822.77	5,911,725.12	65,028,976.45
3	Operating revenue	17,505,279.88	1,750,527.98	5,674,708.90	62,421,797.92
4	Total operating expenses		[1] 139,486.36	[1] 448,790.46	56,710,313.42
5	Net operating revenue		1,611,041.62	5,225,918.44	5,711,484.50
6	Uncollectible revenue from transportation				35,832.13
7	Express taxes		121,815.58	273,159.51	1,231,421.34
8	Total deductions		121,815.58	273,159.51	1,267,253.47
9	Operating income		1,489,226.04	4,952,758.93	4,444,231.03

[1] Commissions paid agents. [2] Indicates deficit.

Additional taxes shown in columns 3 and 6 estimated on basis of 6 per cent of increase in operating income to cover increased federal taxes, and 1 per cent of increase in gross intrastate revenue to cover increased state taxes.

Southern Express Company's taxes on war profits based on a conservative estimate for the seven months ended July 31, 1917, is included. This may be increased on actual results.

No. 8748.

ATLANTA FREIGHT BUREAU ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted January 6, 1917. Decided June 10, 1918.

Rate of 56 cents per 100 pounds applicable on green coffee, in carloads, from New Orleans, La., to Atlanta, Ga., found unreasonable to the extent that it exceeded 48 cents per 100 pounds. Reparation awarded.

William A. Wimbish and *Charles E. Cotterill* for complainants.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Charles J. Rixey, jr., and *M. P. Callaway* for Central of Georgia Railway Company, New Orleans & Northeastern Railroad Company and Southern Railway Company.

J. L. Carling for Arbuckle Brothers.

REPORT OF THE COMMISSION.

HALL, *Commissioner:*

In this proceeding the Atlanta Freight Bureau, of Atlanta, Ga., and the McCord-Stewart Company, a corporation doing a wholesale grocery business, principally at Atlanta, by their joint complaint filed March 23, 1916, allege that the rate of 56 cents on coffee, any quantity, from New Orleans, La., to Atlanta is unjust and unreasonable, and subjects Atlanta to undue prejudice as compared with Birmingham, Ala., and Nashville, Tenn. Reparation is asked. The issues thus raised were restricted by their counsel at the hearing to the rate as applied to green coffee in carloads, and will be dealt with accordingly. Rates are stated in cents per 100 pounds.

Prior to June 1, 1900, coffee, including green coffee, in any quantity was rated sixth class in southern classification and the sixth-class rate from New Orleans to Atlanta was 46 cents. On June 1, 1900, the rating was raised to fifth class and the rate to 52 cents. Effective February 1, 1905, the fifth-class rate was reduced to 48 cents and there remained until January 1, 1916, when it was increased to 56 cents, the present rate. No commodity or carload rate to Atlanta has been provided.

The fifth-class rate from New Orleans to Nashville is 40 cents, the same as to St. Louis, Mo., Evansville, Ind., and Louisville, Ky. To

Birmingham it is 49 cents, 7 cents less than to Atlanta. Birmingham is intermediate to Nashville. Coffee moves to both on commodity rates of 23 cents in carloads, minimum weight 30,000 pounds, and 30 cents in less than carloads. These commodity rates also apply to the river points named. Complainants seek the establishment of a carload commodity rate to Atlanta, and suggest as its measure the existing spread in fifth class of 7 cents over Birmingham, which, added to the Birmingham commodity rate of 23 cents, would afford them substantial relief.

Approximately 800,000 pounds of green coffee are shipped annually from New Orleans to Atlanta. No special equipment or expedited movement is necessary, and although the present rate applies to any quantity the bulk moves in carloads averaging between 30,000 and 33,000 pounds per car. The record indicates that coffee is not very susceptible to damage. The McCord-Stewart Company receives about five-sixths of all the green coffee coming from New Orleans to Atlanta, or more than 650,000 pounds per annum. This it roasts and distributes, with other groceries, in Atlanta and Atlanta territory. Coffee is also roasted in considerable quantities at Nashville and Birmingham.

The burden is upon complainants to prove that the rate of 48 cents applied to carload shipments of green coffee which moved between March 23, 1914, and December 31, 1915, was unlawful, and upon defendants to justify the rate of 56 cents so applied thereafter.

REASONABLENESS OF PRESENT RATES.

Defendants submitted exhibits comparing this 56-cent rate with (1) rates on coffee from New Orleans to other southeastern points; (2) rates on coffee from other points of origin, particularly New York and Ohio River crossings, to Atlanta and other points in the southeast; and (3) rates on other commodities from New Orleans to Atlanta and other points. Under all the circumstances these are not convincing. Many of the rates to points in the southeast which defendants compare with the rate in issue were increased as a part of a general readjustment effective January 1, 1916, following our decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. As a result of numerous complaints against this readjustment we have instituted a general investigation into the character, scope and effect of said readjustment, *Southeastern Rate Adjustment*, No. 9516, now pending.

The following table shows the fifth-class and commodity rates and ton-mile earnings under the latter:

Green coffee, carloads.

From New Orleans to—	Miles.	Fifth-class rate.	Commodity rate.	Ton-mile earnings.
				Mills.
Birmingham, Ala	415	49	23	11.06
Atlanta, Ga	493	56	.....	[1] 22.7
Nashville, Tenn	562	40	23	8.18
Cairo, Ill	569	33	23	8.06
St. Louis, Mo	700	40	23	6.59
Evansville, Ind	721	40	23	6.45
Louisville, Ky	749	40	23	6.14
Peoria, Ill	848	47	25	5.9
Cincinnati, Ohio	863	44	25	5.79
Indianapolis, Ind	881	47	25	5.68
Chicago, Ill	930	47	25	5.38
Kansas City, Mo	880	38	35	7.95
Omaha, Nebr	1,074	41	35	6.52
Sioux City, Iowa	1,175	43	35	5.95
Lincoln, Nebr	1,086	44	38	6.99
St. Paul, Minn	1,360	43	34	5.00
Milwaukee, Wis	1,015	49	27	5.32
Dubuque, Iowa	1,023	50	28	5.47
Pine Bluff, Ark	443	37	25	11.2
Clarendon, Ark	456	37	25	10.9
Little Rock, Ark	486	37	25	10.28
Argenta, Ark	487	37	25	10.27
Jonesboro, Ark	504	43	33	13.1
Bethel, Ark	520	43	33	12.7
Fort Smith, Ark	651	44	32	9.83

[1] Fifth class.

Comparisons with rates on other commodities appear in the following table:

From New Orleans to Atlanta.	Classification rating.	Class rate.	Commodity rate.
Sugar, carloads	Fifth class	56	28
Rice, carloads	Sixth class	46	27
Salt, carloads	Class A	32	19

And to show that the rates in this table are not exceptional complainants submit the following comparison of rates on the same commodities from New Orleans to other points:

From New Orleans to—	Miles.	Fifth class.	Sugar.	Sixth class.	Rice.	Class A.	Salt.
Atlanta, Ga	493	56	[1] 28	46	27	32	19
Nashville, Tenn	562	40	[2] 17	35	29	25	15
Cairo, Ill	569	33	[2] 17	29	27	21	15
St. Louis, Mo	700	40	[2] 17	35	29	25	16
Evansville, Ind	721	40	[2] 17	35	29	25	16
Louisville, Ky	749	40	[2] 17	35	29	25	16
Indianapolis, Ind	881	47	23	41	35	31	19
Peoria, Ill	849	47	23	41	35	31	19
Chicago, Ill	930	47	[3] 23	41	35	31	19

[1] Increased from 23 cents, effective June 1, 1915, and found justified in *The Southeastern Sugar Cases*, 48 I. C. C., 739.
[2] Since increased to 18.2.
[3] Since increased to 24.2.

Defendants contend that the rates on salt, rice, and sugar from New Orleans to Atlanta can not fairly be compared with the rate

on coffee. Salt, they say, is in the same category as pig iron, sand, stone, and other heavy low-grade commodities requiring low rates to induce long-distance movements, and the rice rate is subnormal, due to competition in past years from Savannah. There is no contention that this competition exists at present.

Defendants also say that the rate on sugar from New Orleans to Atlanta is subnormal because of strong competition between New Orleans sugar and New York sugar moving to Atlanta ocean-and-rail via Savannah. The present rate of 28 cents on sugar from New Orleans to Atlanta was established by the carriers as part of a rate adjustment which they characterized as "consistent, harmonious, and proper." *Sugar Rates from New Orleans*, 32 I. C. C., 606.

In *Rice from Texas and Louisiana*, 40 I. C. C., 285, a suspension proceeding in which proposed rates on clean rice were under investigation, including rates from New Orleans, we said, at p. 288:

> Comparisons are made with rates on sugar and green coffee, two other food products of about the same value as rice. * * * Comparisons of rates on these three commodities are proper and were relied on by protestants as well as by respondents. Protestants insist, however, that in making such comparisons the same points of origin and destination should be used and direct attention to the sugar rates from New Orleans to points like St. Louis. * * * It is well known that the rates on sugar from New Orleans are made in competition with the water rates therefrom and with the rates from the north Atlantic seaboard. *Rates on Sugar*, 31 I. C. C., 495; *Sugar Rates from New Orleans*, 32 I. C. C., 606. The carriers may if they choose meet this competition without the resulting rates becoming the gauge of rates to noncompetitive points, or of rates on a commodity of similar transportation incidents. The use for comparison of sugar rates to noncompetitive points is therefore warranted.

For defendants it was testified that the circumstances and conditions surrounding the transportation of coffee from New Orleans to points shown in the first table, and to Atlanta, are not similar; that therefore the rates cited do not furnish a fair measure of the reasonableness of the New Orleans-Atlanta rate; and that the rates on coffee from New Orleans to points in central freight association territory are depressed by the necessity of meeting rail-and-lake competition from New York to Chicago, and by potential water competition on the Mississippi and Ohio rivers.

New Orleans and New York are the leading ports of entry for coffee. Chicago is the largest coffee market in the middle west. The rail-and-lake rate from New York to Chicago was at the time of the hearing 25 cents. The rate from New Orleans to Chicago is also 25 cents and this is said to be the key rate to points in central freight association territory. There has been no effort to equalize rates from New Orleans and New York to points other than Chicago in central ight association territory. Generally speaking, the New York s to points east of Chicago are lower, and to points south of

Chicago higher, than the New Orleans rates, which are not affected by New York competition except in so far as they may be indirectly influenced by the New York-Chicago rate.

Defendants admit that no coffee now moves on the Mississippi or Ohio rivers, but insist that the rail rates are held down by potential water competition. In *Indianapolis Freight Bureau* v. *P. R. R. Co.*, 15 I. C. C., 567, we found that the rates on coffee from New Orleans to St. Louis and Ohio River crossings were not controlled by water competition, and in *Traffic Asso. of St. Louis Coffee Importers* v. *I. C. R. R. Co.*, 28 I. C. C., 484, decided in 1913, we found that there had been no transportation of coffee via water from New Orleans to St. Louis in 10 years except for a short period during 1911.

UNDUE PREJUDICE.

In meeting complainants' contention that Atlanta is unduly prejudiced in favor of Birmingham and Nashville by the application of the 56-cent rate on green coffee in carloads, defendants again take the position that all rates, including the rate on green coffee, from New Orleans to Louisville and other Ohio River points are depressed by water competition, and that in rate making Nashville is considered an Ohio River point rather than a southeastern point, in accordance with our views expressed in *Phillips, Bailey & Co.* v. *L. & N. R. R. Co.*, 8 I. C. C., 93, where we found that the rate on sugar from New Orleans should be no higher to Nashville than to Louisville. The 23-cent carload rate to Birmingham was established on January 1, 1916, as a result of our order in *Freight Bureau, Merchants & Mfrs. Asso. of Birmingham* v. *L. & N. R. R. Co.*, unreported, where we found that the rate on coffee from New Orleans should be no higher to Birmingham than to Nashville.

This defense is based upon the assumption that the circumstances and conditions surrounding the transportation to Atlanta and to Nashville are substantially dissimilar because Nashville has the natural advantage of location on the Cumberland River, and the further assumption that those surrounding the transportation to Atlanta and to Birmingham are substantially dissimilar because Birmingham is intermediate to Nashville on traffic from New Orleans and under the fourth section can take no higher rate. The record contains no evidence which would support the view that river competition controls the Nashville rate on coffee, and in *Freight Bureau, Merchants & Mfrs. Asso. of Birmingham* v. *L. & N. R. R. Co.*, *supra*, we found that the river competition to Nashville was not such as to warrant fourth-section relief covering lower rates to that point than to Birmingham.

The 23-cent commodity rate from New Orleans to Birmingham in combination with the fifth-class rate of 25 cents applying on green or roasted coffee, any quantity, in double bags or boxes, beyond, would enable Birmingham distributors to market their product in Atlanta at a transportation cost of 8 cents less than the through rate to that point. The rates paid by Atlanta on green coffee inbound from New Orleans and roasted coffee outbound to consuming points in the surrounding territory in many instances exceed the corresponding rates to and from Nashville, the excess ranging from 1 to 18 cents, and this excess the complainant McCord-Stewart Company must absorb in order to meet the competition of Nashville roasters.

Further or detailed discussion of the evidence introduced by the parties is unnecessary. Upon the facts of record we find that the rate of 48 cents per 100 pounds applied on green coffee moving in carloads from New Orleans to Atlanta between March 23, 1914, and December 31, 1915, has not been shown unreasonable by the complainants; and that the rate of 56 cents per 100 pounds applied on green coffee, in carloads, since December 31, 1915, has not been justified by the defendants and was unreasonable to the extent that it exceeded 48 cents per 100 pounds.

We further find that complainant McCord-Stewart Company made shipments of green coffee in carloads from New Orleans to Atlanta and paid and bore freight charges thereon at the rate of 56 cents per 100 pounds herein found unreasonable; that it has been damaged to the extent that the freight charges paid exceeded the freight charges which would have accrued on the basis of 48 cents per 100 pounds; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the dates on which payment of the charges were made and other details of the shipments, in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

The rates on coffee from New Orleans seem out of line and in need of a prompt readjustment, in which rates to Atlanta on green coffee, in carloads, minimum weight 30,000 pounds, should not in our opinion exceed the corresponding rates to Birmingham and Nashville by more than 7 cents per 100 pounds. But as to this we make no finding and enter no order for the reason that the Director General of Railroads in exercise of powers conferred upon the President by the federal control act approved March 21, 1918, has by General Order No. 28, bearing date May 25, 1918, initiated and directed the

establishment on June 25, 1918, of rates which exceed the present rates, thereby fixing the relation as well as the amount of the rates to be applied for the future on the traffic here under consideration. In the present state of the pleadings the rates so increased are not subject to review by this Commission.

No. 5689.

GEORGE A. LOWE COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted July 31, 1915. Decided June 10, 1918.

Upon further consideration of the record herein, original finding adhered to.

J. G. Willis for complainant.

G. H. Smith for Union Pacific Railroad Company.

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION.

McCHORD, *Commissioner:*

In our original report in this proceeding, dated March 8, 1915, unreported, we found that the application of charges based on a minimum of 5,000 pounds at the first-class rate of $2.85 per 100 pounds to a shipment of two pieces of steel 40 feet long and 18 inches wide and one piece of steel 40 feet long and 14 inches wide from Chicago, Ill., to Ogden, Utah, was not unreasonable. This shipment was forwarded on July 21, 1910, and moved in box cars more than 40 feet in length, having been loaded in the cars through the end windows.

On March 8, 1915, a report was handed down in *Minimum Charges on Bulky Articles*, 33 I. C. C., 378, wherein we found the following rule to be reasonable:

> Unless otherwise provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway, 6 feet wide by 7 feet 6 inches high, without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high, shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment.

The latter proceeding was reopened for further consideration, and on March 1, 1916, a supplemental report was issued, 38 I. C. C., 257, in which we found that in addition to the rule theretofore prescribed the carriers should publish the following exception:

> Unless a lower rate is otherwise provided, a shipment which contains an article exceeding 22 feet in length and not exceeding 12 inches in diameter or other dimension shall be charged at actual weight and authorized rating, subject to a minimum charge of 1,000 pounds at the first-class rate for the entire shipment.

After the general investigation had been reopened, this proceeding was also reopened for further consideration on petition filed by complainant. There is nothing in the supplemental report in the general investigation which affects in any way our original conclusion herein, and the original report is affirmed. An order will be entered dismissing the proceeding.

No. 9222.

NATIONAL WHOLESALE LUMBER DEALERS' ASSOCIATION

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 14, 1917. Decided May 31, 1918.

Rate on lumber, in carloads, from Greeneville, Tenn., to Wellsville, N. Y., found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

W. S. Phippen for complainant.

Claudian B. Northrop and *Alex M. Bull* for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a voluntary association of wholesale lumber dealers and manufacturers at New York, N. Y. By complaint filed September 28, 1916, on behalf of the John J. Soble Lumber Company, a corporation, of Rochester, N. Y., hereinafter called complainant, it alleges that the rates charged by defendants on a carload of lumber shipped September 24, 1915, from Greeneville, Tenn., to Webster, N. Y., diverted to Wellsville, N. Y., were unreasonable to the extent that they exceeded the joint rate from point of origin to final destination. Reparation is asked. Rates are stated in cents per 100 pounds except as otherwise noted.

The shipment, consisting of 43,100 pounds of chestnut lumber, was delivered to the Southern Railway, hereinafter called defendant, at Greeneville September 24, 1915, consigned by complainant to itself at Webster and subsequently diverted while on the rails of defendant, the initial carrier, to Wellsville. It moved over defendant's line to Potomac Yard, Va.; Pennsylvania system to Elmira, N. Y., and Erie Railroad beyond. Charges were collected in the sum of $158.61 at a rate of 20 cents to Potomac Yard and a rate of $3.36 per net ton beyond. Contemporaneously a joint rate of 22.5 cents applied over the route of movement from Greeneville to Wellsville. Defendant's tariff, in effect when the shipment moved, permitted reconsignment at the

through rate from point of origin to final destination, when reconsignment was requested for certain reasons, including "bona fide rejection by original consignee, when not rejected as device for securing reconsignment."

Complainant contends that the shipment was rejected because of the refusal of an intended customer at Webster to accept the same, and that it was therefore entitled to the reconsignment service. No one having personal knowledge of the facts concerning the shipment testified for complainant. It was represented at the hearing by the traffic manager of the National Wholesale Lumber Dealers Association, whose information was based principally upon conversations and correspondence with complainant. He testified that while the shipment was in transit the party for whom it was originally intended refused to accept any more lumber from the Greeneville mill, whereupon complainant requested defendant to divert the shipment to Wellsville. Defendant introduced a letter from complainant requesting diversion to Nunda, N. Y., of another car which was then en route to Wellsville, provided the car in question could be diverted from Webster to Wellsville, and stating that it was necessary for one of the cars to go to Wellsville, preferably the one in question. Defendant asserts that it was not informed of complainant's contention that this shipment was refused by the original purchaser at Webster until the receipt in the early part of March, 1916, of a letter addressed to its commercial agent at Rochester, and takes the position that the shipment did not come within the tariff provisions relied upon for the reason that complainant was both consignor and consignee and that the tariff does not contemplate a rejection at destination by the shipper. It is not necessary to pass upon this contention of the Southern since there is no evidence of record to show that the shipment was actually rejected at Webster by the customer for whom it was intended. The defendant has, since the movement of the shipment, established reconsignment rules under which diversion or reconsignment is permitted at the joint rate plus a charge of $5 a car where no out-of-line haul is necessitated, which rules are satisfactory to the complainant.

We find that the charges collected were those legally applicable to the shipment. Those charges are alleged by the complainant to be unreasonable in so far as they exceed the charges that would have accrued at the joint through rate of 22.5 cents. There is, however, no substantial evidence of record to support this allegation. The complaint must therefore be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET NO. 1151.[1]

WESTERN TRUNK LINE POTATOES.

Submitted May 8, 1918. Decided June 5, 1918.

1. The proposed increased potato rates from producing sections in Minnesota, Michigan, Wisconsin, North Dakota, and South Dakota to jobbing and consuming centers in the middle west, the south, and the east, and also from the Chicago, Peoria, and St. Louis rate groups, to Sioux Falls, S. Dak., and points in northwestern Iowa taking Sioux Falls rates not justified.
2. Commodity rates on potatoes, carloads, from producing sections in Minnesota and North Dakota to Creston, Iowa, not shown to be unreasonable or unduly prejudicial.
3. Fourth section relief, also the fifteenth section application, denied. The tariffs under suspension required to be canceled, and the complaint dismissed.

Oliver E. Sweet, and *Boyd C. Bierman* for Board of Railroad Commissioners of the state of South Dakota; *Walter Condran* and *A. T. Sindel* for Iowa Railroad Commissioners; *Hugh LaMaster* and *U. G. Powell* for Nebraska State Railway Commission; and *Ira B. Mills* and *A. L. Flinn* for Minnesota Railroad and Warehouse Commission.

O. W. Tong, *R. D. Sangster*, *Hal. R. Lebrecht*, *Julian Peycke*, *O. C. Michael*, *Walter S. Whitten*, *E. H. Hogueland*, and *P. R. Wigton* for protestants.

W. H. Young for complainant in Docket No. 9809.

A. H. Lossow, *E. G. Clark*, *W. D. Burr*, *G. C. Wright*, *B. F. Parsons*, *B. F. Moffatt*, *S. G. Nethercot*, *P. B. Beidelman*, *R. G. Brown*, and *Geo. Barnard* for defendants and respondents.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, and WOOLLEY.

In March, 1917, urging a necessity for additional revenues, the western carriers sought a general percentage increase in their rates on all classes and commodities, including potatoes. No increased potato rates were found justified; nor was it found that these carriers then needed additional revenues. *The Fifteen Per Cent Case*, 45 I. C. C., 303. Following the report in that case, announced June 27,

[1] This report embraces No. 9809, Nebraska-Iowa Fruit Jobbers Association v. Chicago, Burlington & Quincy Railroad Company et al.; Fourth Section Application No. 1853; and Fifteenth Section Application No. 782.

1917, the potato rates there under suspension were canceled. Less than one month later the carriers operating in western trunk line territory filed the tariff schedules here under suspension, in which they propose to increase the carload rates on potatoes from producing sections in North Dakota, South Dakota, Minnesota, Wisconsin, and the northern peninsula of Michigan, to many jobbing and consuming centers in the south, the southeast, and the east; also from Chicago, Peoria, and St. Louis rate groups, to Sioux Falls, S. Dak., and points in northwestern Iowa taking Sioux Falls rates. Unless otherwise noted rates will be stated in cents per 100 pounds.

Observing class B rates as maxima, it seems that the basic plan was to add 2 cents to the present rates; but this plan was not uniformly followed, nor did it contemplate a change in all the potato rates in the western trunk line territory. Many of them remain undisturbed, and some reductions are proposed. The increases, in the final outcome, range from a fraction of a cent to 13 cents; but for the most part they do not exceed 2 cents, which is equivalent to 1.2 cents a bushel. Five reasons are assigned in justification of the proposed adjustment, namely, (*a*) to secure an increase in revenue of about 2 cents a hundred pounds; (*b*) to establish a more equitable rate relation than now exists between the groups of origin; (*c*) to iron out inequalities; (*d*) to eliminate certain fourth section violations; (*e*) and to republish association tariffs which are not in desirable form by reason of fourth section deviations and inadequate grouping west of the Princeton-Cambridge group.

The gist of the contentions of the respondents is that the potato rates are too low, and that this traffic is not bearing an equitable share of the transportation charges.

General protests were entered by the state railroad commissions of Iowa, Minnesota, Nebraska, and South Dakota, and by commercial and jobbing interests at many points of destination. Dealers at the twin cities, who ship largely from Minnesota and to some extent from Wisconsin, also entered protests. Most of these interests oppose rates higher than class C, which they urge should be maintained as maxima under an alternative application that will permit the use of the present commodity rates where they are lower.

The originating territory is outlined on the map at the end of the report. More potatoes than are required for local consumption are grown in that section of the country, and markets for them must be found in other states. The potato-raising industry in this region has grown rapidly. In Minnesota the production increased from slightly less than 10,000,000 bushels in 1900 to a little more than 28,000,000 in 1916, and during the same period the average farm prices in cents per bushel increased from 25.3 to 56.2. The

showing for Wisconsin and Michigan is similar. There the average farm prices in 1916, were, respectively, 62 and 68 cents.

In volume of production and in shipping the Waupaca group in Wisconsin, and the Princeton-Cambridge group in Minnesota, are the most important. As between these two groups, around which the present rate adjustment seems to have grown, there are no fixed differentials, and none are proposed; yet there appears to be a recognized relation that has kept the rates at a level where shippers in both groups can compete with each other in most of the important markets. This is generally true also of the other groups. Those lying north and west of the St. Cloud-Willmar line of the Great Northern Railroad, designated on the sketch by numbers, are under the proposed rates to bear a fixed differential relation to the Princeton-Cambridge group except on traffic to the Missouri River and west. The numbers on the map represent the differentials in cents per 100 pounds. This marks the only change proposed in the group adjustments, and there is no direct opposition to this change in grouping.

Over the available rail routes, and also in point of distance as the crow flies, the Waupaca group is nearer to the principal jobbing and consuming centers lying along and east of the Mississippi River, and to some extent it also is nearer to points lying immediately west of that river in the states of Iowa and Missouri. The greater extent in area of the states of Iowa and Missouri, including the Missouri River cities, are nearer to the Princeton-Cambridge group. The shippers in the latter group contend, and justly so, that if distance is to be the basis of rate advantages to the Waupaca group, the Princeton-Cambridge group should have corresponding advantages where distance is in its favor.

Most of the potatoes shipped from North Dakota and Minnesota move through the twin cities, where a large part of them is reconsigned, some being sent to the south, some to the east, and not an inconsiderable quantity to the Missouri River cities and west. This route to the Missouri River, compared with the more direct routes not so extensively used, involves something of a back haul. With the exception of information bearing upon particular situations, such as the potato movement via the Great Northern Railway, no data were presented to show the volume of the traffic or the operating routes customarily used. Nor is the average loading, except for the Chicago, St. Paul, Minneapolis & Omaha, shown.

The present adjustment, and the proposed readjustment, are, according to the testimony, based largely upon commercial needs, although it does not appear that the changes here under consideration were discussed with the commercial interests, or that they are altogether satisfied with them. In instances there are objections on

the part of the shippers where the changes would have the effect of increasing and decreasing the present spread between the Waupaca and the Princeton-Cambridge groups in reaching certain destinations. Some of the jobbing centers, too, particularly Sioux City, complain of the advantages that the proposed changes would give to their near-by competitors. In part these differences spring from the proposal to leave certain of the rates undisturbed, while others are increased.

Tracing the rate history it is shown that class C rating was established on potatoes more than 20 years ago, when the production was comparatively light, the hauls short, and the movement almost entirely in box cars. In the earlier years potatoes were shipped in the summer months, and the carriers assumed liability for adequate protection against the weather elements. Now the movement is principally in the winter months, and where full risk is assumed by the carriers a charge of from 5 to 7 cents a hundred is added to the rates. When shippers assume the risk they must, if such protection is desired, supply false flooring and temporary linings for cars, also stoves and fuel. These articles and a caretaker are transported free in both directions. When a refrigerator car is used, irrespective of where the risk falls, a car rental charge of $5 is added to the rate. To a large extent reconsigning is permitted without charge; but in instances a charge of $2 per car is imposed.

In 1912 the Western Classification Committee had under consideration a change in the rating of potatoes from class C to class B, but this was not carried out; nor was any change made in the reissue of the classification in April of the present year. Nevertheless, in a fifteenth section application now pending, the respondents seek, by an exception to the classification, to establish class B rating on potatoes in the western trunk line territory. Why there should be an exception in that territory alone, the record does not make clear. In official classification territory the rating is fifth class, but under this rating the carriers assume full risk, and except in certain cases make no charge in addition to the rates for the use of refrigerator cars. Fifth-class rates are for the most part lower in official classification territory than in western classification territory. Originally the carload minimum was 24,000 pounds. This was later changed to 30,000 pounds, which is the minimum that now prevails during the summer months. From October to June, inclusive, when the heavier movement occurs, the minimum weight is 36,000 pounds for the ordinary 36-foot car. The same minima obtain in official classification territory.

In the western trunk line territory neither the class rates nor the potato rates rest upon a definite standard. The class rates bear no

uniform relation to each other. Class C is related to first class by about as many different percentages as there are class scales, and this is largely true of the other classes. Not infrequently fifth class and class B are the same. In such instances, a number of which are specifically stated of record, the maximum potato rates proposed by the respondents would be fifth class. The numbered and lettered ratings of the classification, under these circumstances, mean little more than symbols for a defined group of articles, and they do not, as between classes, represent a uniform spread in the quantum of the rates. Reference to them, as bearing upon the situation here, is not a reliable index to the level of the rates. The commodity rates at present maintained on potatoes are the outgrowth of the individual ideas of different traffic men, applied to particular conditions, over varying periods of time. Some are the same as class C, others are higher, and still others are lower. Following is a summary of illustrations taken from the exhibits:

Range of relationship—percentage.

To first class of—	Proposed potato rates to—
Fifth class, 30 to 43. Class B, 30 to 33. Class C, 26 to 35.	Fifth class, 61 to 107. Class B, 68 to 107. Class C, 74 to 123.

This is the kind of an adjustment that is said to be based largely upon commercial needs, and the same general idea seems to have been carried forward into the proposed readjustment. Whatever these needs are, they have not been definitely explained upon the record, nor is it shown that the shippers have acquiesced in them; yet the respondents emphatically state that in giving form to the contemplated changes this element was largely controlling. It is said that some consideration also was given to the present adjustment, the existing class rates, and distances. Whatever that consideration was, no intelligible explanation of it is given upon the record, and certainly it is not apparent in the rates themselves.

It is patent, however, that no group adjustment of commodity rates can bear a uniform relation to the class rates, from each shipping point in a group, unless, as seldom is the case, precisely the same grouping controls the class scale. Ordinarily group adjustments are based largely upon commercial needs, and in such instances the rates are usually made with reference to the average distances from all points in the group to each destination. In that way each of the groups is given substantially the same level of rates in proportion to distance, transportation conditions, and other special elements that may be present. Each destination also has a rate that bears some

relation to its geographical location. There is no showing here that such a course was followed in building up either the present adjustment or the proposed readjustment; nor do the data of record afford a basis for testing the situation from that angle.

In addition to the rate history, and asserting in general terms the need of additional revenues, the respondents introduced in evidence a comparative statement of some of the proposed rates with the rates maintained in central freight association territory for similar distances under what are called the zone C and zone D scales. These scales, as a whole, are not stated of record. The comparisons upon their face indicate that the central freight association scales, generally speaking, are the same as or higher than the level of the proposed potato rates. But this is not an accurate test, since the central freight association rates include the use of refrigerator cars, and the carriers assume full risk. This, as before explained, is not true of the proposed potato rates. Moreover, the central freight association scales, zone C and D rates applying in the northern half of Michigan north of a line running through Bay City, are on a distance basis, while the proposed potato rates are grouped. No showing in the evidence was made of the transportation conditions in zones C and D as compared with western trunk line territory.

There is little other evidence of record from which to determine the reasonableness of the rates. Burr's Exhibit 1, pages 4 and 5, is an abstract of the present and proposed rates, and the short-line distances, between the points of origin and some of the more important destinations. Using these data, and the carload minimum of 36,000 pounds, as a basis, the average car-mile earnings under the present rates appear to be:

Average car-mile earnings.[1]

Miles.	Under present rates.[2]	Under C. F. A. zone B scale.[3]	Miles.	Under present rates.[2]	Under C. F. A. zone B scale.[3]
101 to 200	28	31.8	801 to 900	14.9	.....
201 to 300	25	22.1	901 to 1,000	17.2	.....
301 to 400	21.3	17.5	1,001 to 1,100	17.7	.....
401 to 500	18	15.4	1,101 to 1,200	18.1	.....
501 to 600	16	13	1,201 to 1,300	16.1	.....
601 to 700	14.6	12.6	1,301 to 1,400	14.1	.....
701 to 800	13.6	.....	1,401 to 1,500	14.6	.....

[1] Expressed in cents.
[2] Does not include $5 rental for refrigerator cars, and where carriers assume full risk, additional charges ranging from 5 to 7 cents a hundred pounds are assessed.
[3] Fifth-class rates, which include the use of refrigerator cars, and the carriers assume full risk without additional charge.

The foregoing figures are open to criticism, since they do not take into consideration the actual movement over established operating routes, and are based upon the average short-line distances be-

tween given points, instead of the average distances from all points in each group. However, the respondents, upon whom the burden of proof rests, did not present data from which more accurate tests could be made.

It may be that the respondents at present are in need of additional revenues, but they have not undertaken to show it upon this record. Instead they refrained from presenting any evidence bearing upon the status of their revenues, stating that an examination of their monthly reports filed with the Commission will demonstrate their needs. On their face these monthly reports do not justify increases in some potato rates, and not in others, or a disturbance of existing relations.

Whatever their measure, the regulating statute requires the carriers to justify the increased rates. Clearly they have failed in that particular. It follows that an order should enter requiring cancellation of the tariff schedules here under suspension, and also denying the fifteenth section application.

In the light of this finding it is unnecessary to discuss in detail the individual interests of the many protestants. There is, however, one situation that requires special mention. Aside from entering a general protest against the proposed increases, the Lincoln Commercial Club of Lincoln, Nebr., contends upon the record and argues on brief that the present potato rates to Lincoln from points in Minnesota, North Dakota, and South Dakota, west and north of the St. Cloud-Willmar line of the Great Northern Railroad, are unreasonable to the extent that they exceed the rates contemporaneously maintained to Omaha, Nebr. The ground for this contention is that the distances to Lincoln over available operating routes are the same as or less than the distances to Omaha. It has not been shown that the existing relationship as between Lincoln and Omaha is unreasonable or unduly prejudicial.

The formal complaint of the Nebraska-Iowa Fruit Jobbers Association was consolidated at the hearing with the investigation and suspension case. It alleged that the rates on potatoes, carloads, from Minnesota and North Dakota to Mason City, Fort Dodge, Des Moines, and Creston, all in the state of Iowa, are and have been unreasonable, unjustly discriminatory, and in violation of the fourth section. The real contention is that the rates to these Iowa cities, which, over the routes through St. Paul and Minneapolis, are directly intermediate to the Missouri River, should not exceed the rates contemporaneously maintained over the same routes to the Missouri River cities. With this issue there also was heard those portions of Fourth Section Application No. 1853, filed by W. H. Hosmer, agent, by which the carriers named parties thereto ask

and Des Moines, from two points of origin. Des Moines is not intermediate to St. Paul and the Missouri River cities on the line of the Chicago, Burlington & Quincy. It is on a branch line; therefore, the fourth section is not violated in maintaining higher rates to that point than are contemporaneously maintained to the Missouri River cities. Creston is intermediate, and from the evidence of record fourth section relief at that point alone, over the route through the twin cities, appears to be warranted. But in a situation of this kind relief can not be granted at a single point without some knowledge of how other intermediate points similarly situated will be affected. In Fourth Section Order No. 383 as amended, the Commission announced the character of information required in order to determine questions of the nature here presented.

Upon the ground that the respondents have not justified it, fourth section relief should be denied. On the showing that the rates to Creston are neither intrinsically unreasonable nor unduly prejudicial, and that the Missouri River rates are to be established via certain routes at Des Moines, Fort Dodge, and Mason City, the complaint should be dismissed.

DANIELS, *Chairman:*

The preceding report, essentially the same as proposed by the examiner, was served on the parties. The respondents and defendants filed exceptions and oral argument was had before Division 2. The findings and conclusions are approved and adopted. The rates proposed are to numerous destinations admittedly not consistent or harmonious. The proof adduced in justification is lacking in certain essential elements. The comparisons cited with rates in central freight association territory are not as detailed and particularized as they might properly be. The propriety of the proposed increased rates is therefore not established, and the suspended schedules must be canceled.

Appropriate orders will be issued.

No. 9371.

PARKERSBURG RIG & REEL COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted June 7, 1917. Decided May 17, 1918.

Rates on nails, when shipped in mixed carloads with oil-well outfits and supplies, from Parkersburg, W. Va., and St. Louis, Mo., to certain points in Kansas, Wyoming, Oklahoma, Texas, and Louisiana, found to be unreasonable. Reparation denied.

Charles Conradis and *Arthur B. Hayes* for complainants.
Robert W. Fyfe and *W. E. Prendergast* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are corporations, engaged in the manufacture of oil-well outfits and supplies at Parkersburg, W. Va., and St. Louis, Mo. By complaint, filed December 9, 1916, as amended, they allege that the fourth-class rates, governed by western classification, charged by defendants on less-than-carload shipments of nails, in mixed carloads with rig iron outfits, from Parkersburg and St. Louis to certain points in Kansas, Wyoming, Oklahoma, Texas, and Louisiana are unreasonable and unjustly discriminatory. Reparation is asked.

Complainants ship rig iron outfits, comprising the machinery or working parts of an oil-well drilling outfit, principally of iron or steel, but including bull wheels, band wheels, tug pulleys, and calf wheels made of wood and shipped in parts, usually without engine, boiler, or drilling tools, in mixed carloads, at the western classification class A rating applicable on "oil-well outfits and supplies," minimum 36,000 pounds. Each shipment includes such bolts as are necessary to assemble or attach the working parts, together with a given quantity of nails. The bolts, although not mentioned in the classification item, are admitted to the mixture as parts of the rig iron outfits, but the nails, at least within approximately two years prior to the filing of the complaint, have been charged the less-than-carload fourth-class rates. Derricks, wooden or steel, k. d., are specifically embraced in the classification description of oil-well outfits and supplies, but are seldom, if ever, shipped by complainants. The

nails are used principally in the construction of the derricks, but to some extent are used in assembling the bull and calf wheels. Bolts also are used for the latter purpose and to some extent in derrick construction. All, if shipped together, would be covered by rule 15 of the classification, reading as follows:

> Parts or pieces, constituting a complete article, received as one shipment, on one bill of lading, will be charged at the rating provided for the complete article.

The mixture of oil-well outfits and supplies has been carried in western classification since 1891. The present description was made effective in February, 1915, as the result of a conference of the Western Classification Committee with representatives of various oil-well supply houses.

Catalogue specifications for an ordinary outfit, weighing about 5,000 pounds, include from 400 pounds to 450 pounds of nails of designated sizes, and for an outfit weighing 10,020 pounds, 500 pounds of nails. From 6 to 12 outfits are shipped in a car, together with from 2,400 pounds to 4,800 pounds of nails, in kegs. During the year ended April 1, 1917, one complainant shipped into the designated territory 314 carloads of rig iron outfits, with a total weight of 14,657,802 pounds, an average of 46,680 pounds per car or 10,680 over the minimum. The nails therefor were merely in addition to a loading already in excess of the required minimum.

There are 126 articles in the present classification description, and it was intended to cover all articles which go to make up a well-digging machine. These articles, when shipped in less-than-carload quantities, are variously rated from first class to fourth class, approximately one-half being rated second class or higher. Nails are shipped in kegs and bolts in boxes, and both are rated fourth class in less than carloads, and fifth class in carloads. The fifth-class rates in western classification territory are generally lower than the class A rates, applicable on the mixture to which it is desired to add nails. When the rig irons are shipped in less-than-carload quantities the nails are included as part of the outfit, and the third-class rates, applicable to the outfits, are assessed on the entire shipments, without tariff authority as far as disclosed. For defendants it is admitted that there is no difference, from a transportation standpoint, in handling nails in mixed carloads with oil-well supplies and in straight carloads, and that the risk of damage is no greater; but it is urged, principally, that the admission of nails to the mixture might lead to a demand for their inclusion with such other articles as houses, shipped in sections, or box shooks, or lumber; that the nails may be used for other purposes, such as the building of shelters and platforms; and that, unless shipped in connection

with and for the assembly of derricks, nails do not constitute a necessary part of the outfit.

While it is also contended that provision is made in the mixture for the wooden wheels, set up, but not knocked down, the description makes no limitation as to the method of shipment, and it therefore appears that nails used in the assembling of such wheels might properly be shipped under rule 15, as part of the complete article.

For complainants it is argued, among other things, that nails are now included in some mixtures, such as roofing paper and derrick lumber when shipped as part of an oil-well outfit; that other articles included in the mixture, such as boilers, rope, and belting, could be used for other purposes; and that a sufficient quantity of nails is not included for any other purpose than the construction of the wheels and derrick.

Nails, when included with building paper, are sealed in the roll, and carriers have declined to authorize shipments in kegs at the building paper rate.

Complainants now ship in carloads and from their own platforms, and the carriers are therefore performing a carload service and charging less-than-carload rates on a portion of the shipment, which, if shipped in carload quantities, would take a lower rating than that on the mixture. The Commission has previously pointed out the desirability of liberal provisions for mixing and the consolidation of small shipments into carload lots. *Western Classification Case*, 25 I. C. C., 442, 471; *Mixed Carloads of Lime, Cement, and Plaster*, 34 I. C. C., 124. In the latter case we required the maintenance of such a provision, upon the basis of the highest rated article in the mixture.

We find that it is unreasonable to rate nails comprising part of a shipment consisting of rig-iron outfits higher than the rating on the rig-iron outfit and that the rates assailed on the nails shipped with rig-iron outfits, parts of oil-well outfits and supplies in carloads, in quantities sufficient to construct the wheels of a rig-iron outfit and the derrick to be used in connection therewith, not exceeding 500 pounds for each such outfit, are, and for the future will be, unreasonable to the extent that they exceed or may exceed the rates contemporaneously applicable on mixed carloads of oil-well outfits and supplies.

The rates charged on shipments of nails are not shown to have been intrinsically unreasonable or to have resulted in undue prejudice to complainants. Reparation is denied.

An appropriate order will be entered.

No. 8893.[1]

M. SELLER & COMPANY
v.
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY.

Submitted October 11, 1916. Decided May 31, 1918.

1. Two less-than-carload shipments of electric portable lamps from Portland, Oreg., to Spokane, Wash., found to have been overcharged and reparation awarded.
2. The western classification rating of double first class on less-than-carload shipments of electric lamps n. o. i. b. n. packed in barrels or boxes, found to have been justified, and the double first-class rating on art glass lamp shades shown to have been reasonable.

C. O. Bergen for M. Seller & Company.

William C. McCulloch for Portland Traffic & Transportation Association.

R. C. Fyfe for defendants and Western Classification Committee.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

These cases are related and will be disposed of in one report. Complainant in No. 8893 is a corporation engaged in the wholesale jobbing business at Spokane, Wash. By complaint filed May 15, 1916, it alleges that the double first-class rate of $1.98 per 100 pounds applied by defendant on two less-than-carload shipments, one of electric portable lamps and the other of glass shades, forwarded from Portland, Oreg., to Spokane, March 27 and April 2, 1915, respectively, was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in amounts per 100 pounds.

At the hearing it was stated for complainant that the present classification ratings, which were established after the shipments moved, are satisfactory, and that the sole question for determination is whether or not the shipments were overcharged. The shipment which moved March 27 consisted of one case of lamp standards and shades and weighed 215 pounds. Charges were collected thereon in the sum of $4.26 at the double first-class rate of $1.98, applicable on

[1] The report also embraces No. 8909, Portland Traffic & Transportation Association v. Chicago & North Western Railway Company et al.

art glass lamp shades, under an item providing that where a package contains articles of more than one class the rate to be charged is that applicable on the highest rated article in the package. The other shipment consisted of eight barrels, one tierce, and one case, of art glass shades aggregating 485 pounds. Charges were collected thereon in the sum of $9.60 at the double first-class rate of $1.98. These shades were to be used on lamp standards which were shipped at the same time, and on which the first-class rate was assessed. The charges on these standards are not attacked. When the shipments moved the western classification, which governs, did not specifically rate electric portable lamps or electric portable standards. Lamps and lamp fixtures, n. o. i. b. n., were rated first class. The first-class rate from Portland to Spokane was 99 cents. It is contended for complainant that the standards and shades constituted lamps; that they were invoiced as lamps; that no extra lamp parts accompanied the shipments; and that the standards and shades when packed or assembled were complete lamps, no parts being left over.

The substance of defendants' defense is that the shipments consisted of two distinct articles, known by manufacturers as lamp standards and lamp shades; that they are not properly classified as lamps; that the standards were equipped to give light and were complete exclusive of the shades; that commercially the standards are known as lamps; that the shades were not lamp parts but ornaments only; and that the rates legally applicable were those applying on the separate articles or, if packed together, the rate legally applicable was that applying on the highest rated article.

We are of opinion and find that the shipment weighing 215 pounds consisted of complete lamps and that the rating legally applicable thereto was the first-class rating on lamps and lamp fixtures n. o. i. b. n. In view of the fact that the shipment weighing 485 pounds contained shades for the lamp standards which were shipped therewith and which when used with the shades made a complete article, we are of opinion and find that the first-class rating on lamps n. o. i. b. n. was also legally applicable to this shipment under rule 15 of the western classification, which provides that—

> Parts or pieces constituting a complete article, received as one shipment, on one bill of lading, will be charged at the rating provided for the complete article.

We further find that complainant made the shipments as described, and paid and bore the charges thereon, which were illegal to the extent that they exceeded those that would have accrued at the first-class rate; and that it is entitled to reparation in the sum of $6.93, with interest.

The complaint in No. 8909, which was filed May 31, 1916, by a voluntary association of shippers at Portland alleges, in substance, that the western classification double first-class rating applicable to less-than-carload shipments of electric lamps from Chicago, Ill., and points east thereof to Portland and other points on defendants' lines in the western classification territory, is unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeds first class.

Prior to October 15, 1915, the western classification did not specifically rate electric lamps, the rating applicable being the first-class rating on lamps and lamp fixtures n. o. i. b. n. On that date a less-than-carload rating of double first class was provided on electric lamps n. o. i. b. n. and a first-class rating on electric lamp standards, not including shades. For some time thereafter the double first-class rate was assessed on electric lamp standards, when shipped without shades, and this appears to be the primary cause of the complaint. Subsequently the first-class rate was properly assessed, and at the hearing complainant's principal grievance appeared to be against the double first-class rating on art glass lamp shades, in support of which evidence was introduced without objection by defendants.

It appears that electric portable lamps of various types are shipped throughout western classification territory, but that the greater volume of the movement to Portland consists of the cheaper lamps, which range in value from $1.50 to about $15 apiece. Most of these lamps have metal frame shades with removable art glass panels, while the lamps of higher value have stationary glass panels. It is contended for complainant that the shades for the cheaper lamps should be rated no higher than first class, for the reason that the detachable panel shade is less valuable and that the risk is not so great, since in case of breakage these panels can be replaced without injury to the shade. It appears from exhibits that the value of the lamp does not always depend on whether the glass panels are removable; that some of the lamps having shades with removable panels are as expensive as many of those having shades with fixed panels; and that some lamps with decorated shades are of a very high value, but complainant's witness states that the demand for the latter is negligible.

It is also contended that the rating on electric portable lamps with detachable panel shades should not exceed the first-class rating on oil lamps packed in barrels or boxes. It is alleged that many of the oil lamps are made of glass or other fragile material, and are therefore subject to a greater risk of damage in transit than the

electric portable lamp. Ordinary glass oil lamps are sold by complainant's members at an average price of $2.25 per dozen. No sub-substantial evidence was adduced in support of the allegations of unjust discrimination and undue prejudice.

The portable lamps, which are made of metal, wood, and wicker, range in size from the small desk lamps to the floor lamps with large bases. Many electric portable lamp shades are too large to be shipped in barrels and there is no uniformity in packing. Up to the time of hearing defendants and manufacturers had been unable to ascertain the average weights and values of the shipments.

It was shown for defendants that some of the electric portable lamp shades are made of bent glass, and that the shades are rated as high as three times first class. Bent glass packed in boxes not exceeding 15 feet in length nor 7½ feet in breadth is rated double first class. The current classification publishes a double first-class rating on lamp globes or shades, coppered, leaded, or framed glass, in place of the item glass lamp shades, art glass.

Upon the present record we are of the opinion and find that defendants have justified the rating of double first class on less-than-carload shipments of electric lamps n. o. i. b. n., and that the double first-class rating on art glass lamp shades was reasonable. The complaint will be dismissed.

Appropriate orders will be entered.

No. 8969.

SOUTHERN PINE LUMBER COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted November 18, 1916. Decided May 31, 1918.

Carload of lumber from Midland City, Ala., to Bradley, Ill., found not to have been misrouted. Complaint dismissed.

W. T. Brannon for complainant.

Edward H. Hart for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale lumber business at Montgomery, Ala. By complaint, filed June 22, 1916, it alleges that, due to misrouting, unreasonable charges were collected on a carload of lumber shipped July 28, 1915, from Midland City, Ala., to Bradley, Ill. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment was delivered to the Atlantic Coast Line Railroad, hereinafter called the Coast Line, at Midland City, a local station on that carrier's line, routed by the shipper "Pa. R. R." No rate or junction point was shown in the bill of lading. The shipment moved over the Coast Line to Pinners Point, Va., and beyond over the New York, Philadelphia & Norfolk and Pennsylvania railroads and connections, delivery being made by the New York Central Railroad. Charges were collected at the legally applicable combination rate of 43.3 cents, composed of rates of 22 cents to Norfolk and 21.3 cents beyond. When the shipment moved a joint rate of 24½ cents applied from and to the points concerned over various routes in connection with lines operating through the Ohio River crossings, including the Pennsylvania lines west of Pittsburgh. As the Pennsylvania Railroad does not operate west of Pittsburgh, Pa., it did not participate in this rate.

The Coast Line has no direct connection with the Pennsylvania Railroad at any point. Under the routing instructions given the shipment could have moved over the Coast Line to Richmond, Va., Richmond, Fredericksburg & Potomac Railroad to Potomac Yard,

Va., thence over the lines of the Pennsylvania system and its connections beyond. The rate applicable over that route, however, was the same as over the route the shipment moved.

For complainant it is admitted that it was in error in specifying routing via "Pa. R. R." instead of "Pennsylvania lines," but it is insisted that it was the duty of the Coast Line's agent to have requested complete routing instructions before forwarding the shipment. For the Coast Line it is contended that as the only way the shipment could have been turned over to the Pennsylvania Railroad was either over the route it actually moved or by way of Potomac Yard, the routing instructions given were fully complied with.

In *Prentiss & Co.* v. *P. R. R. Co.*, 19 I. C. C., 68, we said:

> The notation (D., L. & W. R. R.) by the consignor in the blank on the bill of lading intended for the naming of the route must be regarded as an expression of the consignor's intention that the Lackawanna was to participate in the line haul.

The instructions on the bill of lading indicated that the Pennsylvania Railroad should have a line haul, and the Coast Line in carrying out these instructions was justified in sending it over the route it did.

We find that the shipment was not misrouted, and an order dismissing the complaint will be entered.

No. 9585.

MILLER & LUX, INCORPORATED,

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 19, 1917. Decided May 31, 1918.

Rates on sheep, in carloads, from certain points in Nevada to San Francisco and Oakland, Cal., not shown to have been unreasonable. Complaint dismissed.

Edward F. Treadwell and *Delger Trowbridge* for complainant.

Allan P. Matthew for Western Pacific Railroad Company.

Fred H. Wood, *C. W. Durbrow*, *Geo. D. Squires*, and *Elmer Westlake* for Southern Pacific Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the cattle business at San Francisco, Cal. By complaint filed March 27, 1917, it alleges that the rates charged by defendants on certain carloads of sheep shipped from Winnemucca, Elko, Deeth, and Jungo, Nev., to Oakland, Cal., and San Francisco, between July 10 and October 15, 1915, were unreasonable. It asks reparation.

When the shipments moved defendants' tariffs provided per car rates on sheep based on a scheduled valuation of $3 per head, subject to a 3 per cent increase in the rates for each 50 per cent, or fraction thereof, increase in the declared valuation. The shipments in issue were billed at a declared value of $4.50 per head and charges were assessed at 103 per cent of the basic rates.

In *Iowa Railroad Commissioners* v. *A., T. & S. F. Ry. Co.*, 36 I. C. C., 79, the reasonableness of scheduled valuations, including the one presented herein, carried in tariffs of carriers operating in territory west of Chicago, Ill., was considered. We held that the valuation of $3 per head on sheep was unreasonably low; that defendants' rates on sheep not exceeding $5 in actual value were unreasonable to the extent that they exceeded the then existing rates based on a scheduled valuation of $3; and that the excess rates for excess valuations were unreasonably high and should not exceed 2 per cent of the then existing rates for each additional 50 per cent, or

fraction thereof, of actual value over $5 per head. Defendants herein who were also parties to the case cited, amended their tariffs on October 15, 1915, to conform to those findings.

The record establishes that the declared value fairly represented the actual value of complainant's shipments, and, on the theory that the unreasonableness of the rates charged is thereby established, complainant asks reparation for the difference between the charges paid and those that would have accrued had the rates been based on a scheduled valuation of $5. It also alleges that the addition of 3 per cent to the basic rates for the excess valuation was unreasonable to the extent that it exceeded 2 per cent, and asks reparation on that basis.

In substance this case is a continuation of the *Iowa Railroad Commissioners Case*, *supra*. No reparation was asked therein and none was awarded. We do not feel that in this case justice requires reparation, and it will be denied.

Defendants' rates in effect at the time of the hearing were not attacked, but it is observed that they were based upon value and were therefore unlawful. *Express Rates, Practices, Accounts, and Revenues*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335.

An order dismissing the complaint will be entered.

No. 9521.

CHARLES F. MURPHEY COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted May 14, 1917. Decided May 31, 1918.

A carload of potatoes from Pardeeville, Wis., to Marion, N. C., found not to have been misrouted. Complaint dismissed.

Charles F. Murphey for complainant.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

F. D. Claggett for Southern Railway and Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale potato business at Chicago, Ill. By complaint filed January 25, 1917, it alleges that, due to misrouting, the charges collected on a carload of potatoes shipped January 26, 1915, from Pardeeville, Wis., to Marion, N. C., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 36,000 pounds, moved over the Chicago, Milwaukee & St. Paul Railway to Chicago, where it was reconsigned under proper tariff authority to Marion and routed "P. C. C. & St. L., Southern Ry." No rate or junction point was inserted in the bill of lading. The shipment moved beyond Chicago by way of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad to New Albany, Ind.; Southern Railway to Danville, Ky.; Cincinnati, New Orleans & Texas Pacific Railway to Harriman Junction, Tenn.; and Southern beyond. Charges were ultimately collected in the sum of $220, which represented the transportation charges based on a combination rate of 58 cents, legally applicable over the route of movement, composed of rates of 20 cents from Pardeeville to New Albany and 38 cents beyond, and heater car service amounting to $11.20. The latter charge covered a service en route to Chicago, which now appears not

to have been rendered, plus $4 for services at Milwaukee, Wis., for which there was no tariff authority, so that the shipment was overcharged $11.20. The record does not disclose whether the destination of the shipment was changed before the car reached Chicago. If it was not, a reconsigning charge of $2 applied.

At the time the shipment moved combination rates of 49 cents applied from and to the points in question, composed of 20 cents to Cincinnati, Ohio, and 29 cents beyond over the Chesapeake & Ohio Railway and the Southern through the Virginia gateways; also by way of New Albany and beyond over the Kentucky and Indiana Bridge & Railroad Company to Louisville, the Chesapeake & Ohio to the Virginia cities and the Southern to destination. The Pittsburgh, Cincinnati, Chicago & St. Louis complied strictly with the shipper's instructions in delivering the car to the Southern at New Albany, its only point of connection with that carrier, and can not be said to have misrouted the shipment. The Southern routed the car over its own line and should not be penalized for not delivering it to its competitor, the Chesapeake & Ohio, at Louisville.

We find that the shipment was not misrouted. Defendants will be expected promptly to refund the above-mentioned overcharge of $11.20, with interest, subject to a deduction of $2 if a reconsigning charge applied.

An order dismissing the complaint will be entered.

No. 9422.

NEW JERSEY ZINC COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 458, 1548, 1563, 1572, AND 1625.

Submitted November 2, 1917. Decided May 17, 1918.

1. Rates legally applicable on crude barytes, in carloads, from Cartersville, Ga., to Hazard, Pa., found to have been and to be unreasonable. Reparation awarded.
2. Fourth section relief denied.

E. M. Harter for complainant.

Claudian B. Northrup and *Alex. M. Bull* for Southern Railway Company.

Fitzgerald Hall for Western & Atlantic Railroad Company, Nashville, Chattanooga & St. Louis Railway, lessee.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in zinc mining and manufacturing. By complaint filed December 20, 1916, it alleges that defendants' sixth-class rate of 54 cents per 100 pounds charged on 28 carloads of barytes shipped in February, 1916, from Cartersville, Ga., to Hazard, Pa., was unreasonable to the extent that it exceeded a rate of $4.20 per long ton, or 18.75 cents per 100 pounds. Reparation and a reasonable rate are asked.

The shipments, consisting of crude barytes, moved as routed by the shipper over the Western & Atlantic Railroad, Southern Railway, Baltimore & Ohio Railroad, Philadelphia & Reading Railway, and the Central Railroad Company of New Jersey. They aggregated 1,892,250 pounds and charges were collected in the sum of $5,790.29. A joint sixth-class rate of 54 cents per 100 pounds, minimum 40,000 pounds, was legally applicable and the shipments were undercharged $4,427.86.

Prior to February 5, 1916, a commodity rate of $4.20 per long ton, equal to 18.75 cents per 100 pounds, minimum 20 long tons, applied

on this commodity over the route of movement and also over several other longer routes, by way of the Western & Atlantic, Louisville & Nashville Railroad, or Seaboard Air Line Railway and connecting carriers other than the Southern. On that date the Southern withdrew from this commodity rate, leaving the class rate in effect over the route of movement. Complainant was not aware of this change, and continued to route its shipments over the Southern until after the 28 cars in question had moved. On January 27, 1917, the Seaboard Air Line also withdrew from the $4.20 rate, and the rate by way of the Western & Atlantic in connection with the Georgia and the Atlantic Coast Line railroads was increased to $4.254 per long ton. Complainant contends that the rate applicable over the route of movement was and is unreasonable to the extent that it exceeded and exceeds $4.20.

The defense was borne by the Southern, hereinafter called defendant. It admitted that the application of the sixth-class rates to this traffic is unreasonable, and at the hearing proposed a rate of 21.9 cents per 100 pounds minimum 60,000 pounds. It testified that it withdrew from the commodity rate because the revenue received for its haul from Atlanta to Potomac Yard, Va., 2.5 mills per ton-mile, was unremunerative. The evidence offered in justification of its withdrawal is for the most part a duplication of that offered in *Barytes from Tennessee*, 43 I. C. C., 334, and need not be discussed here.

In the case cited we found that respondents had justified an increase from 17.19 cents to 19.4 cents per 100 pounds in the rate on crude barytes from Sweetwater, Tenn., a point on defendant's Knoxville division, to Hazard. The rate proposed by defendant from Cartersville to Hazard is 2.5 cents per 100 pounds higher than the rate from Sweetwater to Hazard. The latter rate is the sum of defendant's division of 11 cents per 100 pounds from Sweetwater to Potomac Yard and the divisions accruing to the connecting lines beyond. The distance from Atlanta, Ga., where defendant connects with the Western & Atlantic, is the same as from Sweetwater to Potomac Yard, 642 miles. Defendant insists that it is entitled to the same revenue on its haul from Atlanta on traffic from Cartersville as from Sweetwater, and that the additional distance from Cartersville to Atlanta, 47.5 miles, over the Western & Atlantic, and 69.5 miles over the Seaboard Air Line, justifies a higher rate from Cartersville than from Sweetwater to Hazard.

The Western & Atlantic also admits that the sixth-class rate applicable over the route the shipments moved was and is unreasonable. — 'le the latter carrier regards the former rate of $4.20 as too low, 'ends that the rates from Cartersville should be the same as

from Sweetwater, and that considering the great distances the traffic is hauled the Southern's proposed rate of 2.5 cents over the Sweetwater rate is not justified by the difference in distance of 47.5 miles.

Defendant compares the proposed rate with the rate of 22.4 cents per 100 pounds on crude barytes from Leeds, Ala., a point on defendant's line near Birmingham, Ala. On June 1, 1916, that rate was increased to 23 cents per 100 pounds, the present rate. The distance from Leeds to Hazard is 149 miles greater than from Sweetwater to Hazard, and the rate is 3.6 cents per 100 pounds higher. Comparisons were also offered to show that the division of 11 cents, which defendant would receive out of the proposed rate, yields lower ton-mile earnings than are yielded by the rates on barytes from St. Louis, Mo., Cincinnati, Ohio, and Chicago, Ill., to Boston, Mass., New York, N. Y., and other eastern points.

A rate of 21.9 cents, minimum 60,000 pounds, over the route of movement, for an approximate distance of 921 miles would yield 4.75 mills per ton-mile.

We find that the defendants have not justified the increased rate and that the rate legally applicable was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed 21.9 cents per 100 pounds, minimum 60,000 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, and specifying when charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of the undercharges above mentioned may be waived.

Those portions of Fourth Section Applications No. 458 of the Western & Atlantic, No. 1548 of the Southern, Nos. 1563 and 1572 of the Baltimore & Ohio, and No. 1625 of C. C. McCain, agent, wherein authority is sought to continue rates on barytes, in carloads, from Cartersville to Hazard lower than the rates contemporaneously maintained on like traffic from or to intermediate points, were heard with this case. No evidence was offered in support of these applications and they will be denied to the extent that they are involved.

Appropriate orders will be entered.

No. 9458.

GULFPORT FERTILIZER COMPANY, K. C. HALL, LESSEE,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted June 22, 1917. Decided May 31, 1918.

Charges on imported pyrites ore, in carloads, from Pensacola, Fla., to Gulfport, Miss., found to have been unreasonable. Reparation awarded.

Claude W. Owen for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant K. C. Hall is engaged in the manufacture and sale of fertilizer at Gulfport, Miss., as lessee of the Gulfport Fertilizer Company. By complaint filed January 18, 1917, he alleges that the charges collected by defendant on 19 carloads of pyrites ore shipped from Pensacola, Fla., to Gulfport in July, 1915, and January, 1916, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 4 of the act, to the extent that they exceeded charges that would have accrued at the subsequently established rate of $1.20 per net ton. Reparation only is asked. Rates are stated in amounts per net ton.

The shipments consisted of imported pyrites ore, apparently in sacks or barrels, which was used by complainant in the manufacture of fertilizer. They moved over defendant's line from Pensacola to Gulfport, 176 miles. The southern classification, which governed, provided for the application of fertilizer rates on pyrites in carloads. There was no specific import rate on pyrites or fertilizer in carloads, and charges were collected at a domestic rate of $1.80, applicable on fertilizer and fertilizer material, plus a charge of 20 cents per net ton for handling the ore over defendant's wharves at Pensacola. The latter charge was assessed in accordance with defendant's tariffs, which provided that, in the absence of a specific import rate on fertilizer and fertilizer material in sacks or barrels, such charge would be added to the rate from Pensacola.

At the time the shipments moved and at present defendant, in connection with the Mobile & Ohio, the Gulf & Ship Island, the New

Orleans & Northeastern, and the Illinois Central railroads and other carriers, maintained and maintains the following import rates on pyrites ore in carloads from ship side, Pensacola: $1.10 to Hattiesburg, Miss., 200 miles, and $1.20 to various other fertilizer manufacturing points in eastern and southeastern Mississippi, including Meridian, 239 miles, and Jackson, 290 miles. These rates applied and apply over the route of movement to Gulfport and beyond over various routes formed by carriers parties to the tariff. The maintenance of lower rates to these destinations than to Gulfport in contravention of the long-and-short-haul rule of the fourth section of the act was protected by an appropriate fourth section application which was not heard with this case. On June 2, 1916, defendant established the $1.20 rate, which is still in effect from ship side, Pensacola to Gulfport, thus removing the fourth section departures except as to Hattiesburg, to which point, as above stated, a rate of $1.10 still applies. The same rates also applied to these respective destinations, none of which are served by defendant, from Mobile, Ala., or New Orleans, La. For example, a rate of $1.20 applied by way of the Mobile & Ohio to Meridian, 135 miles, and by way of the Illinois Central from New Orleans to Jackson, 183 miles, while a rate of $1.10 applied by way of the New Orleans, Mobile & Chicago Railroad, now the Gulf, Mobile & Northern Railroad, from Mobile to Hattiesburg, 96 miles.

Complainant urges that by reason of certain conditions surrounding the manufacture and sale of fertilizer in Mississippi he was damaged in an amount equal to 80 cents per ton on the shipments as a result of the alleged unduly preferential rates enjoyed by his competitors at Meridian and other points taking the $1.20 rate from Pensacola. It is sufficient to state that the evidence introduced fails to establish with that degree of certainty necessary in discrimination cases the amount of damage, if any, suffered by complainant as a result of any discrimination which may have existed.

Defendant was not represented at the hearing. The rate charged, including the handling charge, yielded 11.36 mills per ton-mile and based on 35.5 tons, the approximate average loading of the cars, yielded over 40 cents per car-mile. The $1.20 rate yields 6.82 mills per ton-mile and 24.2 cents per car-mile.

We find that the charges assailed were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of $1.20 per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he was damaged to the extent that the charges collected exceeded those that would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. The exact amount

of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

As the $1.20 rate has been in effect for more than a year, no order for the future is necessary.

No. 9513.

HUTTON & BOURBONNAIS COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted May 26, 1917. Decided May 31, 1918.

Carload of lumber from Hickory, N. C., to South Fort Plain, N. Y., found to have been misrouted. Reparation awarded.

George L. Forester for complainant.
Alexander M. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3; COMMISSIONERS HARLAN, HALL, and ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Hickory, N. C. By complaint, filed February 12, 1917, it alleges that the charges collected by defendants on a carload of lumber shipped October 20, 1916, from Hickory to Fort Plain, N. Y., reconsigned to South Fort Plain, N. Y., were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The bill of lading, prepared by complainant, showed the destination as Fort Plain; the route as "Sou., Potomac Yds., cheapest W. S. R. R. dly."; and a rate of 29 cents. Fort Plain is a local station on the New York Central Railroad; South Fort Plain, a local station on the West Shore Railroad. The shipment moved over the Southern Railway, Philadelphia, Baltimore & Washington, and Pennsylvania railroads, and the New York Central to Fort Plain.

Upon arrival at that point complainant ordered the shipment reconsigned to South Fort Plain, to which point it moved over the New York Central in connection with the West Shore. Charges were collected in the sum of $158.72, based on a weight of 46,300 pounds and rates of 29 cents to Fort Plain and 4.2 cents from Fort Plain to South Fort Plain, plus a $5 reconsigning charge at Fort Plain, all of which were legally applicable. A 29-cent rate also applied from Hickory to South Fort Plain over the Southern in connection with the Philadelphia, Baltimore & Washington, Pennsylvania, New York Central, and West Shore.

For complainant it was stated that Fort Plain was inserted in the bill of lading through error and that South Fort Plain was the intended destination. It does not attack the measure of the charges collected, but contends that as West Shore delivery at Fort Plain was impossible, and therefore neither the rate inserted in the bill of lading nor any other rate could have applied over the route specified, it was the duty of the Southern's agent at Hickory to call attention to the inconsistency, in which case the error in the destination would have been discovered and corrected.

The rates to Fort Plain and South Fort Plain were joint rates, and in our opinion the Southern's agent at Hickory was chargeable with knowledge of the fact that West Shore delivery was impossible at Fort Plain. "The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory, and therefore impossible of execution." *Conf. Ruling 474(c)*.

We find that the Southern Railway Company misrouted the shipment; that complainant paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued at the rate of 29 cents per 100 pounds; and that it is entitled to reparation from the Southern Railway Company in the sum of $24.45, with interest.

An appropriate order will be entered.

No. 9690.

EASTERN SHORE OF VIRGINIA PRODUCE EXCHANGE ET AL.

v.

ADIRONDACK & ST. LAWRENCE RAILROAD COMPANY ET AL.

Submitted June 6, 1918. Decided June 14, 1918.

Joint rates on vegetables, in carload lots, from wharves on the eastern shore of Virginia by boat to Baltimore and Crisfield, Md., and thence by rail to western, northern, and eastern points, found to be not unreasonable or unduly prejudicial. Complaint dismissed.

N. B. Westcott, *J. Raymond Hoover*, and *John B. Daish* for complainants.

Ralph Robinson and *Henry Wolf Bicklé* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

This proceeding brings in issue the propriety of rates by water and rail which exceed the rates by rail from near-by, cross-country, points.

Complainants are the Eastern Shore of Virginia Produce Exchange, a corporation organized to market farm products grown in Accomac and Northampton counties, Va.; individual stockholders in the exchange; and shippers located in these counties, but not members of the exchange. They attack the present level of rates on vegetables, in carload quantities, from wharves in the counties named to points in central freight association, in trunk line, in New England, in Canadian, and in western trunk line territories. Rates to certain specific points, such as Philadelphia, Pa., New York, N. Y., and Washington, D. C., are also attacked. It is charged that rates on vegetables from wharves in these counties to the destinations named are unreasonable, unduly prejudicial, and should not exceed certain amounts set forth in the petition. Reparation is asked on all shipments forwarded since May 31, 1916.

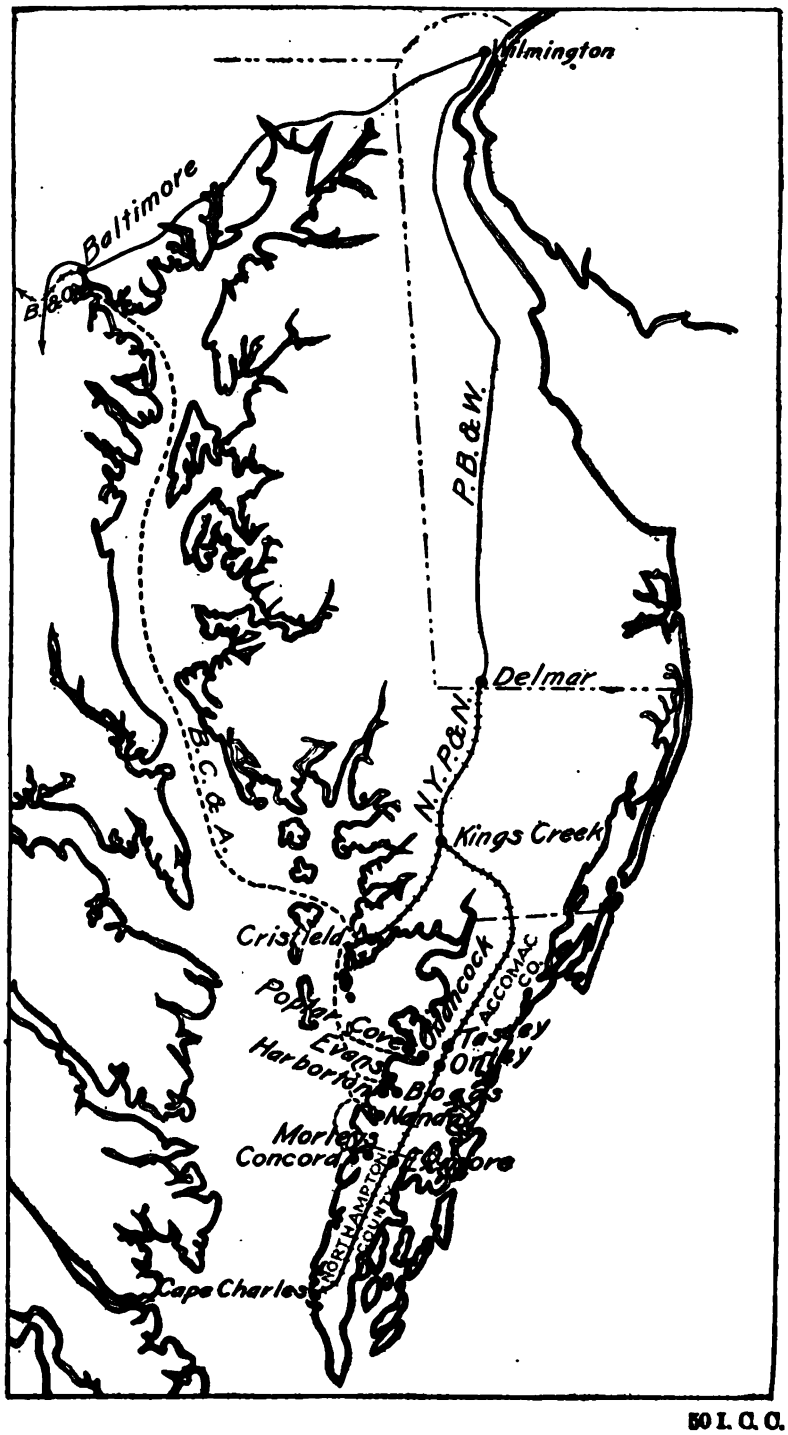
Accomac and Northampton counties are known as the eastern shore of Virginia and occupy the southern portion of a peninsula between

the Atlantic Ocean and Chesapeake Bay. The width of mainland in these counties is about 8 miles and the only rail carrier serving them is the New York, Philadelphia & Norfolk Railroad, which follows the median line of the peninsula. Complainants ship vegetables from 12 wharves on the Chesapeake Bay side; of which Concord and Morleys, in Northampton county, are the most southerly, and Poplar Cove and Onancock, in Accomac county, the most northerly. Directly east of these wharves are Exmore and Tasley, inland stations on the railroad. Harborton is representative of all the wharves and Onley of all the rail stations, for the wharves are in one rate group and the rail stations are in another. The wharves are served only by the Pocomoke River and Occohannock River boat lines of the Baltimore, Chesapeake & Atlantic Railway Company, hereinafter referred to as the defendant, which is owned and controlled by the Pennsylvania system. The rail line serving the inland stations is also owned by that system.

Complainants attack rates on potatoes, sweet potatoes, onions, and cabbages, and the testimony deals mainly with shipments of potatoes; for these move in greatest volume. In carload lots all these vegetables take fifth-class rates under the official classification; and specific rates per package, when published, are based upon estimated weights of packages and the fifth-class rates. Our attention is called to carload rates in cents per 100 pounds on potatoes and mainly to rates to western points.

The rate adjustment, which brought on this complaint, results in rates on potatoes from these wharves that are generally 3 cents higher than the rates from inland stations on the railroad. Prior to April 1, 1916, rates from the wharves were the same as from the rail stations. The accompanying map shows the geographic situation. From the wharves traffic moves by steamer to Baltimore, Md., a distance of about 150 miles, where it is transferred to the defendant's rail connections. When the volume of traffic is very great, a part moves by steamer, or scow, to Crisfield, Md., a distance of about 32 miles. At Crisfield it is transferred to the New York, Philadelphia & Norfolk Railroad and moves over a branch of that line to the main line at Kings Creek, Md., and thence north through Delmar, Del., to the connections of that road. Rates from all points south of Delmar, including Kings Creek and Crisfield, are the same as from Onley and from other cross-country stations near the wharves. The Crisfield gateway was opened in 1915, and the movement beyond Kings Creek is the same whether the traffic originate at Harborton or at Onley.

A part of the record is taken up with theories of rate making in accordance with which the complainants propose certain specific rates


Wilmington
Baltimore
B.&O.
P.B.&W.
Delmar
N.Y.P.&N.
B.C.&A.
Kings Creek
Cristfield
Hancock
ACCOMAC CO.
Poplar Cove
Evans
Harborton
Tasley
Onley
Bloxom
Nandua
Morley
Concord
Bayside
NORTHAMPTON COUNTY
Cape Charles

50 I. C. C.

from these wharves. Rates so suggested are the rates from Baltimore plus an arbitrary of 1 cent to western trunk line, central freight association, and New England territories; and plus 2 cents to trunk line and Canadian territories. These suggestions rest upon the fact that the normal gateway for this traffic is through Baltimore; they do not take into consideration the Crisfield route; and rates so proposed are substantially less than rates from Onley. The suggested rates are upon a basis which is materially lower than was ever in effect, and are urged by complainants on the ground that water-and-rail rates ordinarily are somewhat less than all-rail rates from the same place. It should be noted in passing that these boat lines and the rail line serve the same territory, but do not serve the same points therein; that the Crisfield gateway is necessary to relieve congestion of traffic during the busy season; that rates from points on the eastern shore equidistant with Crisfield from Kings Creek have been approved by the Commission; and that the establishment of lower rates from these wharves than from Onley, Kings Creek, and Crisfield would result either in the closing of the Crisfield gateway or in the violation of the long-and-short-haul clause of the fourth section. However, the statute places the duty of initiating rates upon the carriers, and this duty they have performed. The defendants assumed the burden of proof to show that the present rates, which in substance are rates which have been increased since January 1, 1910, are just and reasonable; and unless it be found that the carriers have failed to sustain the burden of proof it will not be necessary further to discuss the methods of rate making suggested by complainants.

Prior to 1884 traffic from the eastern shore of Virginia moved only by boats. During that year the rail line was completed and produce moved from many points either by water or by rail. Baltimore was the main gateway for shipments by water; Wilmington, Del., was the gateway for shipments by rail. The Baltimore, Chesapeake & Atlantic Railway Company was organized in 1894 and acquired certain properties, including the steamer lines from these wharves to Baltimore. Joint rates from the wharves to all points here considered were established by 1897 and resulted in lower charges on all shipments. In 1899 the Pennsylvania system acquired a controlling interest in the defendant. It is not necessary to enter into a more detailed account, for on July 30, 1915, the Commission issued its report, known as *Steamer Lines on Chesapeake Bay*, 35 I. C. C., 692; and on pages 697 to 699 of that report the history of the steamer lines is set forth. On page 701 the Commission said:

> Upon the record we do not find that the existing services by water operated by the Baltimore, Chesapeake & Atlantic between Baltimore and points * * * on the eastern shore of the Chesapeake Bay and rivers extending therefrom are

being operated in the interest of the public and are of advantage to the convenience and commerce of the people, and that an extension of the time during which such services may continue will neither exclude, prevent, nor reduce competition on these routes by water.

The application of the defendant for leave to continue the operation of its boat lines was denied and the order which accompanied that report required the discontinuance, effective April 1, 1916, of the operation of its steamers between Baltimore and points on the Pocomoke and Occohannock rivers on the eastern shore of Chesapeake Bay. In obedience to that order the defendant canceled all rates effective March 31, 1916, and held itself ready to make proper disposition of the boats.

However, as no one offered to buy these boats or to establish an independent service between the wharves and Baltimore, on these routes by water there was neither competition nor service in prospect after March 31, 1916; and in the early part of that year certain shippers and receivers located on the eastern shore of Virginia and in Baltimore, fearing the threatened lack of service, made applications to the carriers and to this Commission for a continuation of the operation of these boats by the defendant. These applications resulted in an order dated March 29, 1916, that the effective date of the order of discontinuance be postponed until further ordered, pending consideration and disposition of the petition that the said proceeding be reopened for further hearing.

The net operating revenues of the defendant for the years 1910 to 1913, inclusive, are shown on page 698 of that report. If we confine our attention to the net operating revenues of the Pocomoke River and Occahannock River lines there shown the statement would seem to be fairly satisfactory, although defendant's net boat revenues as a whole showed serious decreases. For the year 1914 the net operating revenue of the Pocomoke River line was $27,074.24 and of the Occahannock River line $3,278.71, a total of $30,352.95. In 1915 the operation of the Pocomoke River line resulted in a net loss of $3,201.34 and the net operating revenue of the Occahannock line was $20,420.58, or a total net revenue for the two lines of only $17,219.24. These results were before the defendant and its owning and controlling system when they were requested to continue the operation of the steamers on Chesapeake Bay; and it was with these matters in mind, prior to the new establishment of through routes and joint rates, that they notified the parties and the Commission that the reopening of steamer services should be accompanied by a reasonable increase in rates in cases where the existing rates were not compensatory.

The order of the Commission making it possible to continue the services of these boats was issued March 29, 1916, two days before the cancellation of all rates became effective and the defendant at once attempted to provide rates to take care of traffic which might be offered. As soon as possible local and proportional rates were published. Joint rates on potatoes to western points were made effective June 1, 1916, and shortly thereafter to other points here involved. The complaint attacks proportional rates from the wharves to Baltimore as a part of the only through rates in effect from March 31, 1916, until June 1, 1916. Complainants ask reparation on shipments which moved after May 31, 1916, and little was said at the hearing concerning these proportional rates. The record is clear that no potatoes, certainly none in volume, ever moved from these wharves as early as the 1st of June. For these reasons we shall not pause to consider the through rates in effect prior to the potato movement of the year 1916, nor shall we further consider the proportional rates now in effect from the wharves to Baltimore.

Prior to March 31, 1916, rates to western points from all wharves served by the defendant, including those named herein, were made by adding arbitraries of 6 cents on classes 1 and 2 and 2 cents on the remaining classes to the rates from Philadelphia. After June 1, 1916, rates from these wharves, and from all other wharves served by the defendant, were still based upon Philadelphia; but the arbitraries were 10 cents on classes 1 and 2 and 5 cents on the other numbered classes. The arbitraries added to the rates from Philadelphia to make rates from points on the New York, Philadelphia & Norfolk, represented by Onley, have not been changed; they are the same as formerly were used to make the rates from Harborton. Defendant claims that the increased arbitraries from the wharves were and are necessary to give it reasonable compensation for its services; and that these increases were made upon the basis of the rates formerly in effect from the wharves plus arbitraries, which accrue to it exclusively, of 4 cents on the first two classes and 3 cents on the remaining classes.

As of the time of hearing the rate adjustment from Harborton, New York, and Onley to points in central freight association territory is shown in Table No. 1; it is shown from Onley and from Harborton to other points in Table No. 2.

TABLE No. 1.—*Fifth-class rates and mileages to central freight association territory.*

To—	From Harborton.			From New York.		From Onley.	
	Rate.	Miles.	Per ton-mile.	Fifth-class rate.	Miles.	Rate.	Miles.
	Cents.		*Mills.*	*Cents.*		*Cents.*	
Steubenville, Ohio	24.5	530	9.2	21.5	489	21.5	533
Ashtabula, Ohio	27	612	8.8	24	525	24	615
Cleveland, Ohio	28.5	625	9.1	25.5	579	25.5	628
Coshocton, Ohio	29.5	609	9.7	26.5	568	26.5	612
Zanesville, Ohio	29.5	639	9.2	26.5	598	26.5	642
Mansfield, Ohio	30.5	662	9.2	27.5	621	27.5	665
Columbus, Ohio	31	678	9.1	28	635	28	681
Detroit, Mich	31	806	7.7	28	644	28	809
Findlay, Ohio	32	741	8.6	29	697	29	744
Chillicothe, Ohio	32	724	8.8	29	683	29	727
Bellefontaine, Ohio	32.5	732	8.8	29.5	689	29.5	735
Springfield, Ohio	33	723	9.1	30	680	30	726
Dayton, Ohio	33	748	8.8	30	705	30	751
Greenville, Ohio	33.5	773	8.7	30.5	730	30.5	776
Cincinnati, Ohio	34.5	794	8.7	31.5	751	31.5	797
Fort Wayne, Ind	35.5	807	8.8	32.5	766	32.5	810
Jackson, Mich	36	819	8.8	33	715	33	822
Indianapolis, Ind	36.5	858	8.5	33.5	817	33.5	861
Marion, Ind	37	836	8.8	34	793	34	839
Battle Creek, Mich	37.5	860	8.7	34.5	760	34.5	863
Logansport, Ind	38	976	7.8	35	933	35	979
Chicago, Ill	39	955	8.1	36	912	36	958
Vincennes, Ind	42	1,046	8.0	39	1,005	39	1,049
Decatur, Ill	42.5	1,032	8.2	39.5	991	39.5	1,035
Springfield, Ill	43.5	1,071	8.1	40.5	1,030	40.5	1,074
Freeport, Ill	44	1,068	8.2	41	1,027	41	1,071

TABLE No. 2.—*Fifth-class rates and mileages to trunk line, New England, and Canadian points.*

To—	From Onley.			From Harborton.[1]		
	Rate.	Miles.	Per ton per mile.	Rate.	Miles.	Per ton per mile.
	Cents.		*Mills.*	*Cents.*		*Mills.*
Cumberland, Md	24.5	439	11.1	28	443	12.6
Parkersburg, W. Va	25	668	7.5	29	532	10.9
Clarksburg, W. Va	24.5	586	8.3	28	451	12.4
Harrisburg, Pa	21.5	242	17.7	25	246	20.3
Chambersburg, Pa	23	298	15.4	26.5	302	17.5
Altoona, Pa	24.5	373	13.1	28	377	14.8
Pittsburgh, Pa	24.5	490	10	28	494	11.3
Meyersdale, Pa	24.5	448	10.9	28	364	15.3
Windber, Pa	26.5	418	12.6	30	422	14.2
Rochester, N. Y	26	598	8.7	29	602	9.6
Lyons, N. Y	26	503	10.3	29.5	507	11.6
Buffalo, N. Y	27.5	562	9.8	31	566	10.9
Glens Falls, N. Y	29.5	601	9.8	29.3	605	9.8
Boston, Mass	29.5	505	11.7	33	573	11.5
Montreal, Quebec	34.5	1,008	6.8	38	819	9.2
Toronto, Ontario	36.5	675	10.5	39	683	11.4
Philadelphia, Pa	[2] 29	198	18.1	[2] 34	260	15.8
New York, N. Y	[2] 34.2	291	14.2	[2] 39.2	350	13.2
Washington, D. C	24	256	18.8	25	200	25
Average	25.7	482	11.9	28.9	463	13.5

[1] 150 miles to Baltimore, Md.

[2] Per barrel; weight of barrel, 165 pounds.

The defendants assert that the level of rates from Onley and from other rail stations on the peninsula to points in central freight association territory is lower than it might reasonably be and refer to the report of the Commission in *Eastern Shore of Virginia Produce Exchange* v. *R. R. Co.*, 40 I. C. C., 328. On page 333 the Commission said:

There is no evidence in the record that defendants' rates are unreasonable *per se*. As is well known, the New York-Chicago rates are basic rates for the percentage scale in central freight association territory and also fix the Philadelphia and Baltimore rates. Rates from Cape Charles to Chicago are constructed on the basis of arbitraries over the Philadelphia rates to Chicago. Addition of these arbitraries produces the same scale of rates as from New York, and the rates from both points are scaled to intermediate points on established percentages of the New York-Chicago scale based on distances. Thus the rates from Cape Charles to all central freight association territory points are the same as from New York. Defendants assert that in view of the shorter distances from New York to most of these points, the greater density of traffic, and competitive conditions, Cape Charles has been given a most favorable adjustment. In numerous cases the reasonableness of the New York-Chicago scale of rates has been attacked. *Detroit Board of Trade* v. *Grand Trunk Railway of Canada*, 2 I. C. C., 315; *G. C. Pratt Lumber Company* v. *Chicago, I. & L. R. Co.*, 10 I. C. C., 29; *Saginaw Board of Trade* v. *Grand Trunk Ry. Co.*, 17 I. C. C., 128; *Scott Paper Co.* v. *P. R. R.*, 26 I. C. C., 601. This scale, however, has remained practically undisturbed except for the increase following *The Five Per Cent Case*, 32 I. C. C., 325. We are of opinion and find that the rates assailed have not been shown to be unreasonable.

The position of the defendants may be summarized as follows: Rates by rail from points on the peninsula might reasonably be upon a higher level than rates from New York; rates from New York, even as recently increased, are reasonably low rates; and if rates from Onley might reasonably be higher than they are, it is idle to talk about lower rates from Harborton than from Onley, or from New York. For nearly 20 years rates from Harborton and from Onley were the same and upon the same scale as from New York; assuming, therefore, that Harborton should have no lower rates than apply from Onley, they proceed to show the reasons for the additional arbitraries charged from the wharves.

They assert that whatever financial disadvantages the defendant and its steamer lines suffered in the past, or suffer now, have not been and are not due to ungenerous divisions awarded out of the joint rates; and that the added arbitraries accruing to the sole benefit of defendant and its boat lines were and are justified by the net results of defendant's operations.

On traffic to central freight association territory, moving through Baltimore, the defendant is allowed by the lines of the Pennsylvania system all of the arbitrary of 3 cents and 35 per cent of the balance of the joint rate. On traffic moving by way of Crisfield defendant

receives all of the arbitrary, 3 cents, plus a flat division of 5.2 cents. Omitting the 3-cent arbitrary, the division received by defendant on traffic moving through Baltimore is said to be larger than is accorded the rail lines from Onley to Wilmington out of similar rates. The divisions allowed the steamers by the Baltimore & Ohio at Baltimore are practically the same in amount as those allowed by the Pennsylvania, although the basis is somewhat different.

In *Steamer Lines on Chesapeake Bay*, *supra*, on page 701, we said:

> This company's steamer lines as a whole appear to be profitable, and we are not convinced that, if independent and unrestrained, they could not earn at reasonable rates a fair return on the value of the steamers and other necessary properties. The only through rates to eastern shore points between these lines and the Pennsylvania lines are through Crisfield to Delmar, Del., and points intermediate, and although these steamer lines now have through rates with the Pennsylvania and Baltimore & Ohio railroads through Baltimore, they would undoubtedly be more free under independent management in dealing with the trunk lines with reference to rates and divisions.

That statement is to be read as of the time it was made and in connection with the record then before us. The present record shows that the net revenues of these lines have continued decreasing, as indicated by the totals shown on page 698 of that report. As shown there, the net revenues of the steamer lines were $162,594.61 in 1911; $138,360.90 in 1912; and $68,576.83 in 1913; a rather marked decline. The present record shows that the net revenues after the period covered by that report were as follows: $57,271.38 in 1914; $24,957.14 in 1915; $146,663.69 in 1916; and $66,600.33 for 10 months of 1917. The peak shown in the net revenues for 1916 may be due in part to other factors, but it reflects the additional income derived from the arbitraries which began to accrue to the steamers in that year. The severe decline in the net revenue shown for the first 10 months of 1917 was partly due to additional costs of operation for that year.

The growing costs of labor and materials which have been thrust upon the world by the European war are so generally distributed that it is only necessary to summarize briefly their effects upon this defendant. Steamer coal, for which it paid $2.79 per gross ton in April, 1916, cost $4.20 in November, 1917; wages on its steamers in November, 1916, amounted to $15,688.90, and in the same month of 1917 for like grades and numbers to $17,810; the cost of 387,436 meals, passenger and employee, for 10 months of the year 1916 was $77,548.07, or 20 cents per meal, the cost of 367,830 meals for 10 months of 1917 was $86,192.56, or 23.4 cents per meal; receipts for passenger meals for 10 months in 1916 were $18,449.63 and for the similar period in 1917, $20,886.50; and the cost of wharf labor at

Baltimore for handling 172,957 tons in 1916 was $30,887.67, whereas 161,064 tons in 1917 cost $40,819.40, a rise in the average cost per ton from 17.85 cents to 25.34 cents. For 10 months in 1917 the vegetable traffic, moved by steamer, was 9.8 per cent of the total traffic handled by defendant and more than 23 per cent of the total traffic handled by its boats. If the 3-cent arbitrary be deducted from the revenue derived from 44,730 tons of vegetables carried by the Pocomoke and Occohannock lines in that year the net revenue of the steamers for that period would be reduced by $26,838. But this is only a partial statement of the loss such a striking down of the arbitrary would produce. The arbitraries apply on practically all traffic by all boat lines; no reason is suggested for its removal from one class of traffic and not from all; the boat lines carried more than 200,000 tons of traffic in 10 months of 1917; and if the arbitraries applied to a little more than one-half that amount the revenue derived from the operation of the steamers would be converted into a loss.

Rates from these wharves to points in central freight association territory yield revenues in mills per ton-mile which can not be considered unreasonable. Nor, having regard to the distances, can the revenues per ton-mile shown in Table No. 2 on traffic to trunk line, New England, and Canadian territories be deemed too high. By this it is not to be understood that all the rates shown in Tables 1 and 2 are found to be individually reasonable; all that is intended is an approval of the general adjustment.

Complainants base part of their claim for lower rates by these steamers than from interior points by rail upon the claim that rates water and rail have in the past ordinarily been lower than all rail and cite in support of this contention certain differential and break-bulk rates applying by lake and rail in central freight association territory. Whatever the fact may be concerning the propriety in normal times of water-and-rail rates lower than rates all rail, nothing shown in this record indicates that the additional arbitraries are excessive or are not needed by the defendant.

Complainants claim that the service rendered by these steamers is so much less desirable than the service by rail from inland stations that on potatoes from these wharves they are obliged to shrink their prices by the amount of the arbitrary of 3 cents over the rate from Onley, and in addition thereto to make an allowance to the purchaser of 10 cents per barrel. These allowances are made, but the explanation appears to be that the exchange sells produce f. o. b. point of origin and rates from all points on the eastern shore are the same except from these 12 wharves. The allowance of 10 cents per barrel appears to be made to compensate for damage to the appearance and condition of the vegetables due to alleged rough handling by the

water carriers. Assuming the service to be less desirable than that by rail, statistics offered by the complainants fail to show any decline in the proportion of traffic forwarded by them by steamer.

The produce exchange handles approximately 60 per cent of all the produce shipped from the eastern shore of Virginia. From all points east of the railroad shipments are made mainly by rail. This is true also of points west of the railroad south of Exmore and north of Tasley. Only for a little more than 14 miles of the 58 miles of rail line in the eastern shore of Virginia can there be any real competition for traffic between the rail line and these steamers. Confining our attention to white and sweet potatoes, onions and cabbages, the statistics filed by complainants show that of the total traffic handled by the produce exchange, by rail and by steamer, the steamers carried 12.45 per cent in 1913; 13.09 per cent in 1914; 12.72 per cent in 1915; 16.15 per cent in 1916; and 12.92 per cent for the 10 months in 1917. And the steamers carried these percentages of the total traffic notwithstanding the facts that more potatoes are raised east of the railroad than west thereof, and that potatoes constitute the largest part of vegetable traffic.

Notwithstanding the objections which complainants urge to the service afforded by the steamers, the record suggests advantages offered by that service which countervail the disadvantages. Traffic for rail transportation must await the placing of the car, and the car must be loaded by and at the risk and expense of the shipper. Traffic by steamer is accepted on the wharves at the risk of the carrier and thereafter the carrier is responsible for its care and loading. The steamer lines load this traffic at the wharves and transfer it at Baltimore and Crisfield to the cars of their rail connections at their own risk and expense.

Complainants and defendant appear to differ concerning the question whether a common carrier is entitled to earn a reasonable return upon its properties as a whole or upon each branch thereof. This report has considered earnings of the steamer lines, mainly the Pocomoke River and Occohannock River lines. It is due the defendant, however, to add that from 1907 to 1912, inclusive, it paid dividends which aggregated only 14.7 per cent, or an average of 2.45 per cent per annum; that for the last five years it has paid no dividends; and that its accounts now show a very substantial deficit.

Many things are brought out in the record which have not been touched upon in this report because not necessary to the determination of the main issue. The Commission should find that the rates from these wharves are not unreasonable or unduly prejudicial, and the complaint should be dismissed.

HARLAN, *Commissioner:*

The above report is substantially in the form proposed by the examiner who heard the case. Exceptions to it were taken on behalf of the complainants; but upon examination of the record we are satisfied that the facts are accurately stated and that the general conclusions suggested are sound.

While rail-and-water rates have generally been lower than all-rail rates, there is no rate-making principle that requires such a relationship in all cases. Nor is there any principle of rate making that requires us to condemn water-and-rail rates as unreasonable merely because they are on a higher basis than the all-rail rates between the same or adjacent points. Both classes of rates must be just and reasonable under the circumstances and conditions surrounding the traffic. Here it is shown that the Pocomoke and Occohannock lines run from Baltimore to "stub-ends," that is to say, to wharves serving these complainants. Their outbound traffic begins and inbound ends at these wharves. While the boats are operated during ten or eleven months of the year, there is no great density of traffic except during the summer and early autumn. The haul is short and there is no freight originating at and destined beyond the carrier's own terminals on which the boat lines may earn additional revenues. Upon the whole record the findings and conclusions suggested by the examiner are sustained and his report is adopted as the report of the Commission.

It is not within our power to modify the rates initiated by the President through the Director General of Railroads in General Order No. 28 except upon specific complaint and, therefore, the foregoing report of the examiner is approved and adopted as the Commission's own report only in so far as it deals with the rate situation discussed upon the record in the case. The complaint will be dismissed.

No. 8080.

GALIGHER MACHINERY COMPANY
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.

Submitted January 14, 1918. Decided June 14, 1918.

Failure of initial carrier to stop at Brighton, Ohio, for completion of loading, a car partly loaded with electrical machinery at Oakley, Ohio, and consigned to Bingham, Utah, found to have resulted in damage to complainant. Reparation awarded.

W. M. Langdon for complainant.

William D. Riter for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and sale of machinery at Salt Lake City, Utah. By complaint filed June 14, 1915, it alleges that due to the failure of the Baltimore & Ohio Southwestern Railroad to stop at Brighton, Ohio, to finish loading a car partly loaded with machinery at Oakley, Ohio, and consigned to Bingham, Utah, it was subjected to the payment of unlawful and unreasonable charges. It asks reparation.

A car partly loaded with electrical machinery, which weighed 11,300 pounds, was delivered in October, 1913, to the Baltimore & Ohio Southwestern Railroad at Oakley, consigned to complainant at Bingham, with a notation on the bill of lading to stop the car at Brighton to complete loading. The car was forwarded to destination without being stopped at Brighton, thus necessitating the movement of the machinery at Brighton, which weighed 6,600 pounds, as a separate shipment. Charges were ultimately collected on both shipments in the total sum of $480.70, the basis for which does not appear. Had the car been stopped and the loading completed at Brighton, the charges would have been $386, made up of the carload rates of 15 cents per 100 pounds, minimum 30,000 pounds, to East St. Louis, Ill., and $1.12 per 100 pounds, minimum 30,000 pounds, beyond, plus a $5 stop-off charge.

We find that the Baltimore & Ohio Southwestern Railroad Company failed to stop the car at Brighton for completion of loading

as directed in the bill of lading and authorized by its tariff, and that as a consequence complainant was damaged to the extent of the difference between the charges paid and those that would have accrued had the car been stopped at Brighton as directed. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged and is entitled to reparation from the Baltimore & Ohio Southwestern Railroad Company in the sum of $94.70, with interest.

An appropriate order will be entered.

No. 9334.

ILLINOIS SUPPLY & CONSTRUCTION COMPANY

v.

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY ET AL.

Submitted April 16, 1917. Decided June 14, 1918.

Charges on common building brick, in carloads, from Dow, Ill., to Sedalia, Mo., found to have been unlawful. Reparation awarded.

I. H. Gamble for complainant.

C. M. Lord for Chicago, Peoria & St. Louis Railroad Company and its receivers.

J. W. Allen for Missouri, Kansas & Texas Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation manufacturing brick at Dow, Ill., alleges by complaint filed October 27, 1916, as amended, that the rate charged by defendants on four carloads of common building brick shipped from Dow to Sedalia, Mo., during May and June, 1915, was unreasonable, unjustly discriminatory, and unduly prejudicial. It prays for reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds.

The shipments, aggregating 224,160 pounds, moved over defendants' lines by way of Alton, Ill. Charges were collected in the sum

of $224.16 at the applicable joint class E rate of 10 cents, minimum 40,000 pounds. There were and are in effect over the route of movement commodity rates on common building brick, in carloads, of 1.25 cents, minimum 50,000 pounds, from Dow to Alton, and 7.25 cents, same minimum, from Alton to Sedalia, a total of 8.5 cents. No protective fourth section application was or is on file with us covering this departure from the rule of the fourth section, and it is therefore unlawful and should be promptly eliminated.

Defendants state that they will eliminate the fourth section violation by publishing a through commodity rate based on the combination of rates to and from Alton, and express a willingness to award reparation on that basis. Complainant states that this will place it substantially on a parity with its competitors near East St. Louis, Ill., and will remove the undue prejudice complained of.

We find that the charges collected were unlawful to the extent that they exceeded those that would have accrued at the aggregate of the intermediate rates and carload minima contemporaneously in effect to and from Alton. Complainant is not named in the transportation papers, but the record shows that it controls the entire output of the Jersey Clay Products Company, the nominal consignor, and was the true owner and consignor of the shipments which were sold f. o. b. Sedalia. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis of the aggregate of the intermediate rates and minima; and that it is entitled to reparation in the sum of $33.03, with interest.

An appropriate order will be entered.

No. 9307.

F. S. HARMON & COMPANY

v.

NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY ET AL.

Submitted April 12, 1917. Decided May 31, 1918.

Rates on baby walkers, k. d., in crates and bundles, in less than carloads from Walton, N. Y., to Tacoma, Wash., found to have been unreasonable. Reparation awarded.

E. L. Porter for complainant.

A. B. Cade for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture and jobbing of furniture and household goods at Tacoma, Wash. By complaint, filed November 16, 1916, it alleges that the class rates assessed by defendants on two less-than-carload shipments of baby walkers, knocked down, in crates and bundles, forwarded January 25 and April 17, 1916, from Walton, N. Y., to Tacoma, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

A baby walker consists of a circular wood frame supported by wood or metal spindles or uprights which extend from a circular wood or metal hoop, or base, to which casters are attached. From the wood frame, to which a wood tray is attached, a small seat is suspended by springs and straps. This article ranges in value from $8.10 to $36 a dozen, and is not easily damaged in transit.

The shipments, which were packed in crates and bundles, knocked down, moved over defendants' lines. Under the head of "toys," the western classification, which governed, rated baby walkers, knocked down, in boxes, first class, and, by a general rule in the classification, when shipped in crates, one and one-half times first class, and in bundles, double first class. The joint through first-class rate from Walton to Tacoma was $3.70, and charges were collected on the shipments in crates, which weighed 900 pounds, in the sum of $49.95, at a rate of $5.55, and on the shipments in bundles, which weighed 360 pounds, in the sum of $26.64, at a rate of $7.40.

It is contended that the rates assessed were unreasonable to the extent that they exceeded $2.20, the commodity rate applicable to various kinds of toys from Walton to Tacoma.

For complainant it is urged that, inasmuch as baby walkers are classified in the western classification under the caption "toys," it is unreasonable to assess a higher rate thereon than the commodity rate of $2.20 applicable to toys, including children's sidewalk sulkies, knocked down, bodies boxed or crated (actual value not exceeding $24 per dozen); toy alphabet and building blocks, wood or stone, boxed; toys, children's and toy wagons, hobbyhorses, rocking teams, and doll carriages, knocked down, boxed or crated. But no evidence was offered to show the relative conditions surrounding the transportation of baby walkers and any of the toys included in the commodity description in question. Prior to the time these shipments moved complainant shipped all of its baby walkers over water routes from New York at a rate of $1.85. The withdrawal of the vessels from that service necessitated the routing of these shipments by rail.

It is asserted for defendants that baby walkers are light and bulky, and that there is only a slight movement from eastern points to the Pacific coast. The latter statement is substantiated by complainant's evidence to the effect that the demand for baby walkers is not sufficient to justify it in manufacturing them in quantities. It is stated for defendants that a heavy importation of toys in straight shiploads from foreign countries to Pacific coast terminals induced the establishment of the commodity rate of $2.20 on toys in order to influence the movement of toys from the Atlantic seaboard to the Pacific by rail.

Baby walkers were originally classified in the western classification under the caption of "sporting goods or toys." This heading was changed to "games or toys," and baby walkers were continued under it. The Committee on Uniform Classification recommended that the item covering baby walkers be placed under the head of "furniture," where we think it more properly belongs. On June 15, 1917, the western committee established the following descriptions and ratings under the caption of "furniture":

Baby jumpers, fenders or walkers:	Class.
S. u., in boxes or crates, l. c. l	D1
K. d. flat or folded flat, in boxes or crates, l. c. l	1

Under the rules in the western classification these articles k. d. in bundles would be rated at one and one-half times first class.

We are of the opinion and find that the rates assailed were unreasonable to the extent that they exceeded the first-class rate of $3.70 per 100 pounds on baby walkers, in crates, and the one and one-half

times first-class rate of $5.50 on those in bundles. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of $23.31, with interest.

The rates found reasonable have been in effect for more than a year. An order awarding reparation will be entered.

No. 9767.

WAUSAU SOUTHERN LUMBER COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted November 5, 1917. Decided June 14, 1918.

Rates charged on lumber, in carloads, from Laurel, Miss., to Des Plaines, Ill., found to have been illegal. Reparation awarded.

A. G. T. Moore for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Laurel, Miss. By complaint filed February 28, 1917, it alleges that the rates charged by defendants on two carloads of yellow-pine lumber shipped January 5 and 7, 1915, from Laurel to Des Plaines, Ill., were unreasonable to the extent that they exceeded 24 cents. It asks reparation. The claim was presented to the Commission informally January 29, 1916. Rates are stated in cents per 100 pounds.

The shipments, which aggregated 80,500 pounds, were billed by complainant to Chicago, Ill., for delivery at consignee's private siding at Des Plaines, on the Chicago & North Western Railway, and a rate of 24 cents was inserted in the bills of lading. They moved over the Gulf & Ship Island Railroad to Jackson, Miss., Illinois Central Railroad to Chicago, and Chicago & North Western beyond. Charges were collected in the sum of $213.70, at rates of 26 cents on one shipment and 27 cents on the other.

At the time the shipments moved defendants maintained a joint commodity rate of 26 cents on this traffic from Laurel to Des Plaines. Contemporaneously a rate of 24 cents, published in the same tariff, applied from Laurel over the Gulf & Ship Island and Illinois Central to Chicago. The tariff provided that, in the absence of specific provisions to the contrary, shipments transported under the rates named therein would be subject to all terminal charges and all allowances for switching, etc., published in tariffs of individual carriers performing the various services. Agent Lowrey's Chicago switching tariff, in effect at the time, on file here and to which the Illinois Central and Chicago & North Western were parties, named Des Plaines as a Chicago rate point on carload traffic originating in Mississippi and delivered by the Chicago & North Western. The local rate from Chicago to Des Plaines, which the Illinois Central would absorb, was 3 cents. On March 15, 1915, the rate to Chicago was increased, and the rate to Des Plaines was reduced, to 24.5 cents. Since March 16, 1917, a rate of 25.5 cents has applied to both points.

We find that the rate legally applicable was the lower rate of 24 cents per 100 pounds, and that the rates charged were illegal to the extent that they exceeded that rate. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that accrued at the rate herein found legally applicable; and that it is entitled to reparation in the sum of $20.50, with interest.

An appropriate order will be entered.

No. 9191.

F. S. HARMON & COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

Submitted January 22, 1917. Decided May 31, 1918.

Rate legally applicable on brass plated or coated iron rods in carloads from Wallingford, Conn., to Tacoma, Wash., found to have been unreasonable. Defendants authorized to waive undercharge.

E. L. Porter for complainant.

A. B. Cade for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in manufacturing and jobbing furniture and house furnishings at Tacoma, Wash. By complaint, filed September 18, 1916, it alleges that the rate charged on a carload of brass-washed iron rods, in boxes, shipped in May, 1916, from Wallingford, Conn., to Tacoma, was unreasonable. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in amounts per 100 pounds.

The shipment, weighing 29,500 pounds, moved over defendants' lines. It consisted of 150 boxes of iron rods three-eighths of an inch in diameter and 12 feet long, with a thin coating or plating of brass. These rods, which were invoiced as brass-plated iron rods, are also known as brass-washed iron rods. Charges were collected in the sum of $450, at a carload commodity rate of $1.50, minimum 30,000 pounds applicable, under the caption "brass goods not silver plated," on rods, including iron rods brass covered. This rate is still in effect.

It is agreed by the interested parties that the rods in question were not what is commercially known as brass-covered iron or steel rods, which are iron rods with a covering of sheet brass or a brass tube with a solid steel core. They were in fact iron rods plated with brass. At the time the shipment moved there was also in effect from Wallingford to Tacoma a carload commodity rate of 75 cents,

minimum 80,000 pounds, and a less-than-carload rate of $1.25, on rods, threaded or not threaded, under the heading of iron or steel articles. It is stated for defendants that in the past this item has been regarded as covering shipments similar to the one under consideration from eastern manufacturing points to the Pacific coast, and that charges should have been assessed at the less-than-carload rate of $1.25 and actual weight. It is contended for complainant, on the other hand, that a carload commodity rate of $1.10, minimum 30,000 pounds, ought to have been applied under the tariff item naming that rate on "window shades, materials and fixtures, viz, window curtain poles * * * and fixtures for same," as this material is used by complainant exclusively for window curtain poles. It is admitted, however, that the rods in 12-foot lengths are not used as window curtain poles, but are cut to size as ordered.

We are of the opinion that the rate legally applicable was the fifth-class rate of $1.90, minimum 36,000 pounds, applicable under the western classification, in effect when the shipment moved, on iron or steel rods, brass plated, which are described in the current classification as iron and steel rods, brass coated. The shipment was therefore undercharged $234. There is apparently no good reason from a transportation standpoint why the article in question should be rated higher than brass-covered iron rods which are used for similar purposes and are said to be approximately three times the value of brass plated or coated iron rods, and no justification therefor was offered for defendants.

We find that the rate legally applicable on brass plated or coated iron rods, in carloads, was unreasonable to the extent that it exceeded $1.50 per 100 pounds, minimum 30,000 pounds. Defendants may waive the collection of the outstanding undercharge. As to the future we make no finding and enter no order for the reason that the Director General of Railroads in exercise of powers conferred upon the President by the federal control act approved March 21, 1918, has by General Order No. 28, bearing date May 25, 1918, initiated and directed the establishment on June 25, 1918, of a rate which exceeds the present rate, thereby fixing the rate to be applied for the future on the traffic here under consideration. In the present state of the pleadings the rate so increased is not subject to review by this Commission.

An order dismissing the complaint will be entered.

No. 9876.

HUMPHREY BRICK & TILE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted March 13, 1918. Decided June 14, 1918.

1. In establishing the boundary lines of groups, carriers should follow some measure or principle, such as radial or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines.
2. Rates on clay hollow building blocks, in carloads, from Brookville, Pa., to Atlantic seaboard cities and points taking same rates, found to be unduly prejudicial to the extent that they exceed the rates from certain other points in the same clay zone to the same destinations.

R. A. Koontz for complainant.
Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

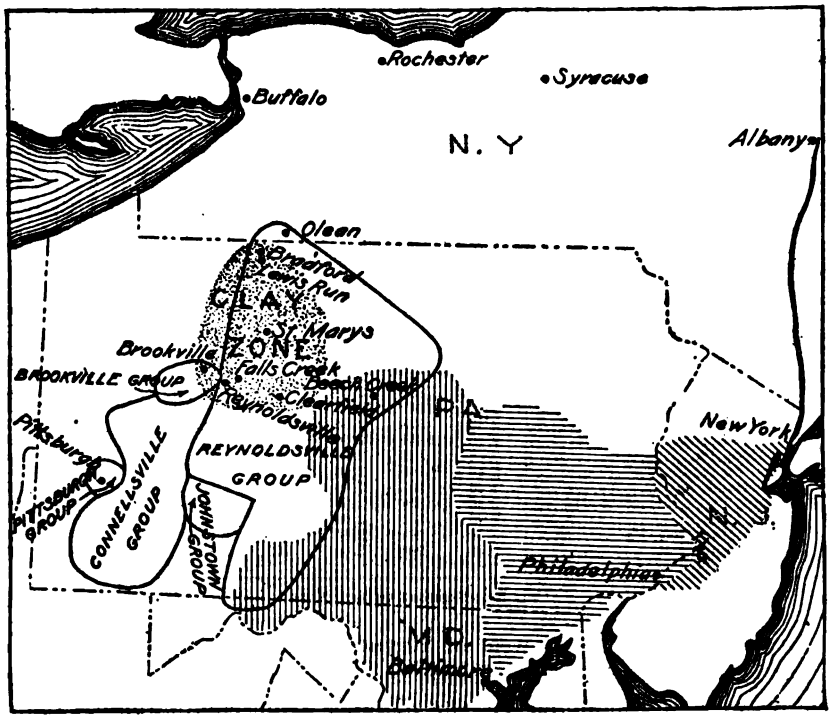
In northern Pennsylvania, due south from Buffalo, N. Y., is a region containing a stratum of hard clay peculiarly adapted to the manufacture of hollow building blocks and similar building materials. This clay zone extends from a point just west of Brookville toward the east for a distance of about 50 miles, and toward the north for a distance of from 60 to 80 miles. Within the limits of this zone are several points, including Brookville, at which this clay is mined and manufactured into various products. The rates from all points in this zone, except Brookville, are the same to Atlantic seaboard cities. Rates from Brookville are 10 cents per ton higher than the rates from other points in the zone. Complainant, operating a plant at Brookville, attacks that adjustment. Its complaint alleges that the rates on hollow building blocks, in carloads, from Brookville to Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and points taking same rates, are unjust and unreasonable to the extent that they exceed the rates from Reynoldsville, Falls Creek, St. Mary's, Bradford, and Lewis Run, points in the zone referred to, and Beech Creek, a point about 100 miles east thereof; and further, that they are unjustly discriminatory in violation of section 2 in that they place complainant at a disadvantage as compared with its competitors at the points mentioned. At the hearing, by consent

of counsel for defendants, the complaint was amended by withdrawing the charge of unjust discrimination under section 2 and substituting therefor an allegation of undue prejudice under section 3.

The clay found in the zone above described has unusual fire-resisting qualities, and the products manufactured therefrom are largely used for fireproofing purposes. The hollow building blocks turned out by complainant are unglazed and are almost entirely used in connection with stucco plaster for interior partition work. Complainant ships these blocks to 14 eastern states. Out of its total output of 707 cars during the year 1916, however, 373 cars went to the destinations involved in this case. Complainant's chief competition in those markets is with manufacturers located at other points in the clay zone. These competitors turn out the same kind of products, manufactured from the same kind of clay, ship to the same territories, and in many instances have the same line of customers as complainant. The record indicates that the freight rate advantage of 10 cents per ton which the other clay zone points have over Brookville in the eastern seaboard markets is a serious handicap to complainant. Only recently it lost a large government contract at Washington, D. C., a Baltimore rate point, by half this difference of 10 cents per ton. For these reasons complainant is more interested in the relative adjustment than in the intrinsic reasonableness of the rates; in fact, it presented no evidence against the level of the rates from Brookville. Condensed into a sentence, its contention in this case is that "the present grouping is arbitrary, illogical, and unreasonable, and is unduly prejudicial to the interests of complainant."

The rates on hollow building blocks from manufacturing points in Pennsylvania to Atlantic seaboard cities are the same as the rates on brick, and are predicated to some extent upon the rate from Chicago to New York as the base. In *Metropolitan Paving Brick Co.* v. *Ann Arbor R. R. Co.*, 17 I. C. C., 197, the Commission, among other things, prescribed a rate of 21 cents per 100 pounds, or $4.20 per ton, on brick from Chicago to New York, and held that this rate should be scaled down from and to intermediate and related points in accordance with the established percentage basis applicable between central freight association and eastern trunk line territories. This base rate of $4.20 per ton was increased 5 per cent, to $4.42 per ton, following the second decision in *The Five Per Cent Case*, 32 I. C. C., 325. Pittsburgh, Pa., is a so-called 60 per cent point; consequently the rate from that district to New York is $2.66 per ton. East of Pittsburgh the carriers break away from the regular percentage basis. Here the territory is divided into groups, the

rates from which are differentially related to the rate from Pittsburgh to New York. The rates from Chicago to Boston are differentials of 40 cents per ton over, and to Philadelphia and Baltimore, of 40 cents and 60 cents per ton, respectively, under, the rates to New York. Notwithstanding the comparative proximity of the Pennsylvania groups to eastern seaboard markets, and especially to the numerous points taking common rates therewith, the Chicago differentials are employed in constructing the rates from the Pennsylvania groups. The map shows the approximate outlines of the



Pennsylvania groups and their geographical relation to each other. To give some idea of the limits of the destination groups it also shows the extent of the Pennsylvania Railroad points taking the same rates as New York, Philadelphia, and Baltimore from Brookville.

The subjoined table, taken largely from an exhibit filed by defendants, shows the rates and distances via the Pennsylvania Railroad and its connections from the producing points mentioned in the complaint and also from other representative manufacturing points in the various origin groups.

[Rates in dollars per ton.]

	New York.		Philadelphia.		Baltimore.		Boston.	
	Rates.	Miles.	Rates.	Miles.	Rates.	Miles.	Rates.	Miles.
Pittsburgh group:								
Pittsburgh, Pa	$2.66	446	$2.26	368	$2.06	340	$3.06	653
Homestead, Pa	2.66	443	2.26	365	2.06	337	3.06	650
New Kensington, Pa	2.66	444	2.26	366	2.06	338	3.06	651
Glassmere, Pa	2.66	443	2.26	365	2.06	337	3.06	650
Connellsville group:								
Butler, Pa	2.61	456	2.21	378	2.01	350	3.01	663
Templeton, Pa	2.61	458	2.21	380	2.01	352	3.01	665
Connellsville, Pa	2.61	439	2.21	361	2.01	333	3.01	646
Fairchance, Pa	2.61	459	2.21	381	2.01	353	3.01	666
Grotztown, Pa	2.61	437	2.21	359	2.01	331	3.01	644
Jeannette, Pa	2.61	420	2.21	342	2.01	314	3.01	627
Blairsville Inter., Pa	2.61	398	2.21	315	2.01	287	3.01	600
Brookville group:								
Sligo, Pa	2.56	483	2.16	405	1.96	377	2.96	680
Climax, Pa	2.56	473	2.16	395	1.96	371	2.96	680
New Bethlehem, Pa	2.56	469	2.16	391	1.96	367	2.96	676
Brookville, Pa	2.56	448	2.16	360	1.96	346	2.96	655
Reynoldsville group:								
Reynoldsville, Pa	2.46	433	2.06	355	1.86	331	2.86	640
Falls Creek, Pa	2.46	427	2.06	349	1.86	325	2.86	634
St. Marys, Pa	2.46	419	2.06	341	1.86	317	2.86	626
Lewis Run, Pa	2.46	[1] 427	2.06	382	1.86	364	2.86	[1] 634
Bradford, Pa	2.46	[1] 421	2.06	387	1.86	369	2.86	[1] 628
Beech Creek, Pa	2.46	333	2.06	255	1.86	231	2.86	540
Johnsonburg, Pa	2.46	436	2.06	358	1.86	334	2.86	643
Ridgway, Pa	2.46	428	2.06	350	1.86	326	2.86	635
Kane, Pa	2.46	452	2.06	374	1.86	350	2.86	659
Olean, N. Y	2.46	[1] 396	2.06	370	1.86	346	2.86	[1] 603
Renovo, Pa	2.46	351	2.06	273	1.86	249	2.86	558
Lock Haven, Pa	2.46	324	2.06	246	1.86	222	2.86	531
Williamsport, Pa	2.46	299	2.06	221	1.86	197	2.86	506
Punxsutawney, Pa	2.46	380	2.06	302	1.86	274	2.86	587
Patton, Pa	2.46	363	2.06	285	1.86	257	2.86	579
Clearfield, Pa	2.46	356	2.06	278	1.86	250	2.86	563
Bigler, Pa	2.46	347	2.06	269	1.86	241	2.86	554
Mill Hall, Pa	2.46	328	2.06	250	1.86	226	2.86	535
Curten, Pa	2.46	345	2.06	267	1.86	243	2.86	552
Bellefonte, Pa	2.46	343	2.06	265	1.86	241	2.86	550
Scotia, Pa	2.46	340	2.06	262	1.86	234	2.86	547
Cumberland, Md	2.46	395	2.06	317	1.86	289	2.86	602
Bedford, Pa	2.46	358	2.06	280	1.86	252	2.86	565
Queen, Pa	2.46	350	2.06	273	1.86	244	2.86	557
Newton Hamilton, Pa	2.46	281	2.06	203	1.86	178	2.86	488
Mount Union, Pa	2.46	284	2.06	206	1.86	181	2.86	491

[1] Via Erie Railroad to New York.

Brookville is 15 miles west of Reynoldsville, but as complainant's plant is 1½ miles east of Brookville and the Reynoldsville plant about a mile west of Reynoldsville, the distance from complainant's plant to the nearest plant in the present Reynoldsville group is about 12½ miles. It will be noted from the map and table that the Reynoldsville group, although the nearest to the destinations, is by far the largest, taking in points ranging from 281 to 452 miles to New York, from 178 to 369 miles to Baltimore, and about the same spread of, but much lesser, distances to the most westerly of the points taking New York and Baltimore rates. As compared with those spreads of 171 miles and 191 miles to New York and Baltimore, respectively, the distance spreads between the clay zone points hereinbefore referred to, including Brookville, are only 29 miles and 52 miles, respectively.

Defendants' justification of the reasonableness of the increased rates from Brookville is based upon the proposition that hollow building blocks properly take the same rates as brick in this territory. In *Stowe-Fuller Co.* v. *Pennsylvania Co.*, 12 I. C. C., 215, the Commission held that the same rates should apply on fire, building, and paving brick from certain producing points in Ohio to New York and other eastern destinations. In the *Metropolitan Paving Brick Company Case*, *supra*, with which was consolidated a rehearing of the *Stowe-Fuller Case*, *supra*, this question was again considered on a very complete record and the same conclusion reached. In pursuance of what they regarded as the spirit of those decisions, the carriers applied the same rates on a long list of other building materials manufactured from clay, including hollow building blocks. The average pre-war prices of brick and hollow building blocks were about the same and, while the present prices of certain kinds of brick appear to be higher than the present prices of hollow building blocks, the differences are no greater than those between the several kinds and grades of brick, which differences, it was held in the above cases, were not sufficient to justify a grading of rates. The average car loading of the hollow building blocks turned out by complainant is about 30 tons, whereas that of brick is close to the marked capacity of the car. The volume of the movement of brick also appears to be greater than that of hollow building blocks.

With the foregoing facts in support of the propriety of common rates on hollow building blocks and brick as a basis, defendants point out that the distances from Brookville to the destinations involved herein are substantially the same as the distances from Pittsburgh, and that the rates from Brookville are 20 cents per ton less than the rates from Pittsburgh. It is further pointed out that the rate from Pittsburgh to New York, for example, is the established percentage of the rate from Chicago to New York, which the Commission itself prescribed in the *Metropolitan Paving Brick Case*, *supra*, and permitted to be increased 5 per cent in *The Five Per Cent Case*, *supra*. The operating conditions from the Pittsburgh district are said to be more favorable than from Brookville to eastern destinations. As a detail of that contention, defendants showed that only about 1 per cent of the outbound loaded cars from complainant's plant is supplied by inbound loaded cars to complainant's plant. It appears, however, that there is a glass factory at Brookville which uses from 500 to 750 cars of raw materials in the manufacture of its annual output of 100 to 150 cars of glass. The inbound cars made empty at the glass factory and other industries in Brookville are available for outbound loading at complainant's plant.

The following table shows the ton-mile earnings, and the car-mile earnings on an average loading of 30 tons to the car, derived from the present rates from Brookville to the destination points mentioned:

	New York.	Philadelphia.	Baltimore.	Boston.
Rates per ton	$2.56	$2.16	$1.96	$2.96
Ton-mile earnings	.0057	.006	.0056	.0045
Car-mile earnings	.171	.18	.168	.135

While admitting that the exclusion of Brookville from the Reynoldsville group "indicates rather bad grouping," the single witness for respondents defended the present group adjustment on the ground that it is one of long standing, and on the further ground that the lines between groups must be drawn somewhere. In respect to the first ground the witness for complainant testified that, during certain periods in the past, the same rates had applied from Brookville as from other points in the clay zone. A check of the tariffs shows that for at least four years prior to March 15, 1912, Brookville took the same rates as Reynoldsville to New York, thus indicating that Brookville was formerly included in the Reynoldsville group, and further that the present group adjustment is not a long-established one. In respect to the second ground it may be laid down as a general rule of action that in establishing the boundary lines of groups, some measure or principle, such as radial or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines, should be followed. *Brown* v. *Vandalia R. R. Co.*, 41 I. C. C., 317, 320. The exclusion of Brookville from a common rate group with the other clay zone points can be justified on none of these grounds. The difference in distance as between Brookville and the other clay zone points is slight, being much less than the distance spread between the extreme points in the Reynoldsville group, and between the nearest and most distant points in the destination groups. In fact, the differences in distance between Brookville and the other clay zone points are so small that, considering the total distances to the destinations, they may be disregarded. Brookville products compete with the products of the other clay zone points, but, according to the testimony of complainant's witness, they do not compete with the products of the other points now included in the Brookville group. The plants at New Bethlehem, Sligo, Climax, and St. Charles, the other manufacturing points in the Brookville group, turn out materials which differ from the hollow building blocks manufactured by complainant. The New Bethlehem

plant manufactures salt glazed brick and the Sligo, Climax, and St. Charles plants, common fire-brick, building materials which it is stated are not generally used for the same specific purposes as, and therefore not competitive with, hollow building blocks. Furthermore, the clay stratum underlying the country around the other points in the present Brookville group is not the same as that in the zone in which Brookville is located.

The distances from Bradford, Lewis Run, and Olean to New York are less via the Erie Railroad than via the Pennsylvania Railroad. The latter line therefore contends that the inclusion of those points in the Reynoldsville group is due to the competition of the Erie, which railroad does not reach Brookville. The difference in distance via these two lines from the points mentioned is not as great as that between the nearest and most distant points in the destination groups. There are numerous points which take New York rates via the Pennsylvania which do not take New York rates via the Erie. The witness for the Pennsylvania was not in position to state whether his line or the Erie was actually responsible for the inclusion of those points in the Reynoldsville group, and counsel for defendants, in oral argument before the presiding examiner, admitted that they had not been able to get the facts which would verify their contention. Even though it did appear that the Erie was responsible for the group adjustment of the points referred to, the contrast presented by the distance spread between Brookville and the other clay zone points and the distance spread between the destination group points is so marked that very little weight could be given to the contention. The distance to New York from Brookville is 4 miles less than that from Kane, and only slightly greater than that from other points in the northern part of the Reynoldsville group, which are not reached by the Erie Railroad. Furthermore, the Erie does not reach Philadelphia and Baltimore.

It is interesting to compare the group adjustment to eastern seaboard cities with that to important consuming markets in New York and Pennsylvania, some of which are intermediate to the destinations involved herein. For example, the rates from Brookville and Reynoldsville to Buffalo, Rochester, Syracuse, and Albany, N. Y., and to points in Pennsylvania just beyond the easterly edge of the Reynoldsville group, are the same. The same adjustment applies to the west. To such points as Cleveland, Cincinnati, and Chicago the rates from Brookville and Reynoldsville are the same. Complainant states that on intrastate traffic to Pittsburgh the rates from Brookville and Reynoldsville are the same. Brookville takes the same eastbound class rates as Reynoldsville, and also the same rate on cement from the Lehigh district in eastern Pennsylvania. It would appear, therefore,

that the maintenance of higher rates on hollow building blocks from Brookville than from Reynoldsville and other points in the clay zone to Atlantic seaboard markets is an exceptional adjustment.

The Commission should find and conclude that defendants have justified the reasonableness of the present rates from Brookville to the destinations in question, but that those rates are unduly prejudicial to the extent that they exceed the rates contemporaneously maintained from Reynoldsville, St. Mary's, Falls Creek, Bradford, and Lewis Run. The complaint also refers to Beech Creek, but the distances from that point are so much less than the distances from Brookville that the allegation of undue prejudice and disadvantage in favor of that point should not be sustained. The effect of these conclusions will be to put Brookville in the same group with the other clay zone points mentioned in the complaint, but nothing stated in the report should be taken as an approval of the present boundary lines and rate adjustment of the various origin and destination groups.

HARLAN, *Commissioner:*

The exceptions, filed by the defendants only, disclose no inaccuracy in the facts as stated in the foregoing report by the examiner who heard the case, but are addressed largely to the conclusions proposed by him.

Blanket or group rates very often grow out of commercial, competitive, or transportation conditions. In some instances natural or geographical conditions, such as rivers and state lines, form the boundaries of rate groups. Many districts with a characteristic traffic, such as lumber, grain, or fruit, under current tariffs are divided into one or more rate groups. Areas underlaid with coal, ore, or other minerals are often broken up into rate zones according to their grade or quality. Blanket or group rates resting on such conditions have many times been commended by the Commission, because, although they usually involve some disregard of distance, they nevertheless promote a healthy competition and put producers and consumers on a more or less equal basis. But rate groups ordinarily should be neither broader nor narrower than is required by the conditions on which they are based.

In this case the stratum of clay underlying the complainant's plant not only differs from the clay found at other points in the Brookville group, but the clay products of the complainant differ from the clay products made at other points in that group. There are, therefore, neither commercial nor natural reasons for the inclusion of the complainant's plant in that group. On the other hand, the clay used by the complainant is shown of record to be in char-

acter and quality a part of the same clay stratum that underlies the near-by points in the Reynoldsville group, and in the latter group are the complainant's real competitors. Under these circumstances, and in the light of the whole record, and particularly in view of the fact that the distance from the complainant's factory to the competing factories in the Reynoldsville district is so slight compared with the distance to the general market for the products of all these factories, we are of the opinon, and so find, that the conclusions proposed by the examiner are sound. His report is therefore adopted as a part of this report and an appropriate order giving effect to the conclusions proposed by him will be entered.

No. 9249.

KNOPKE BROTHERS
v.
CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted March 22, 1917. Decided May 31, 1918.

Rate on Spanish cedar cigar-box lumber, in carloads, from Brooklyn, N. Y., to Denver, Colo., found to have been unreasonable. Reparation awarded.

Carle Whitehead and *Albert L. Vogl* for complainants.

H. A. Scandrett, *J. Q. Dier*, *R. W. Fyfe*, and *L. T. Wilcox* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Frank J. Knopke and Charles J. Knopke, copartners, engaged in manufacturing cigar boxes at Denver, in this complaint, filed by them on September 19, 1916, allege that the rate charged by the defendants on a carload of Spanish cedar lumber shipped on August 28, 1914, from Brooklyn to Denver, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that the component from the Mississippi River to Denver exceeded the rate contemporaneously applicable on common lumber. They ask reparation and the establishment of a reasonable rate.

The claim was presented to the Commission informally on January 12, 1916. On March 21, 1916, the complainants were advised that the claim could not be informally adjusted. A formal complaint was received on September 19, 1916, but was returned solely for the addition of a participating carrier east of Chicago as a party defendant. The amended complaint was received by the Commission on October 10, 1916. The defendants contend that the claim should be considered as abandoned because the complaint was not "filed" within six months after notice that the claim could not be informally adjusted. We find that the complaint as originally received was sufficient to stop the running of the statute. A part of this lumber belonged to the complainants and a part to one F. E. Perralt. Under a private arrangement between them, and in order that their two less-than-carload lots might have the benefit of the carload rate, all the lumber was billed as one shipment and consigned to the complainants only. It was what is commonly known as a consolidated carload shipment. As to Perralt's part of the shipment the complainants, as consignees of the whole shipment, were therefore his shipping agents or representatives. The charges against the complainants, as consignees of the shipment, were paid in one sum to the defendants by a joint friend, as it happened, of Perralt and of the complainants, this being done as an accommodation to them. As the complainants alone were parties to the transportation records, they alone filed the complaint. In it, however, they demanded reparation on the entire consolidated carload, taking that course, so far as Perralt's portion of the shipment was concerned, as his agents and representatives. Under these circumstances we think that Perralt's interest in the claim, when made known of record by him at the hearing more than two years after the charges had been paid, is not barred by the statute, and that the order awarding relief may run in favor of Perralt to the extent, *pro tanto*, of his interest in the shipment.

The shipment, weighing 37,400 pounds, consisted of 87,662 feet of Spanish cedar cigar-box lumber, of which 38,275 feet were owned by Knopke Brothers and the balance by Perralt. The lumber was about three-sixteenths of an inch thick, from 5 to 11 inches wide and from 4 to 6 feet long, and was packed in bundles of from 100 to 200 feet each. It moved over the lines of the Erie system to Chicago, Ill., Chicago & Alton Railroad to Kansas City, Mo., and Union Pacific Railroad beyond. Charges were collected in the sum of $508.64, at the applicable combination rate of $1.36 on Spanish cedar, composed of the fifth-class rate of 35 cents to the Mississippi River, governed by the official classification, and the third-class rate of $1.01, governed by the western classification, beyond. There was contemporaneously in effect over the route of movement from the Mississippi

River to Denver a commodity rate of 32½ cents on common lumber, including box shooks, and a rate of 3 cents over the lumber rate on built-up or combined wood, including veneered cigar-box lumber. These rates are still in force. There was also an ocean-and-rail rate of 56½ cents on cigar-box lumber, imported or domestic, from Brooklyn to Denver, which has since been canceled, the present rate being $1.45. A proportional fifth-class rate of 62 cents, applicable on traffic originating east of the Indiana-Illinois state line, canceled January 1, 1915, and a local fifth-class rate of 63 cents, were contemporaneously effective from the Mississippi River to Denver. On September 1, 1916, the western classification established a rating of fifth class on cigar-box lumber in carloads.

Defendants maintain that fifth class is reasonable on cigar-box lumber. The Union Pacific expressed a willingness to join in making reparation on the basis of the subsequently established rate, if the claim is not barred by the statute of limitations.

Spanish cedar is listed as a wood of value in the western classification, and a higher rate thereon than on common lumber is justified. Spanish cedar box lumber is from around 25 to 100 per cent more valuable than veneered cigar-box lumber, depending on the grade or quality of each. Veneered cigar-box lumber is subject to damage from wetting, because of the tendency of the veneer to peel off, but the Spanish cedar is also liable to warp when wet. There is a considerable movement of veneered cigar-box lumber, but complainants' shipment seems to have been the only carload of Spanish cedar ever moved into Denver over the Union Pacific. There is no such difference in transportation conditions, however, as to justify the wide difference in rates on Spanish cedar cigar-box lumber and veneered cigar-box lumber at the time of movement. The rate charged yielded earnings of approximately 44⅛ cents per car-mile and 2⅓ cents per ton-mile for the movement west of the Mississippi River, 854 miles. The contemporaneous 62-cent rate would have yielded earnings of approximately 27 cents per car-mile and 1¼ cents per ton-mile for the same movement.

The relationship that should be maintained between the rates on cigar-box lumber and other lumber is now before us in Docket No. 8131, *In the Matter of Rates on and Classification of Lumber and Lumber Products*, and will be left for determination therein.

We find that the rate assailed was unreasonable to the extent that the component west of the Mississippi River exceeded the contemporaneous fifth-class rate applicable on traffic originating east of the Indiana-Illinois state line; that complainants and Perralt made the shipment as described and paid and bore the charges thereon in the sums of $222.20 and $286.44, respectively: that they were damaged

to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sums of $63.72 and $73.14, respectively, with interest.

An order awarding reparation will be entered, but no order for the future is necessary.

HALL, *Commissioner*, dissenting in part:

I am unable to agree with the majority report in so far as it finds that the claim of Perralt was seasonably filed. The informal claim and the subsequent formal complaint were both filed by and in the name of Knopke Brothers, without mention of or reference to Perralt, and they contain no intimation of agency for an undisclosed principal.

At the hearing, more than two years after the shipment was delivered and the charges paid, Perralt's interest for the first time appeared. This took the form of an amendment to the complaint, then offered, proposing to make him a party complainant. The statute had then run its course. If complainants had been the agents of Perralt their action might be treated as his, but no agency to make claim on his behalf was established of record and its existence can not be inferred. The only agency disclosed in the record is that of the Solace Cigar Company, which advanced and paid the freight charges for Knopke Brothers and for Perralt, respectively, and collected from each the moneys so advanced. When the statute has run the claim is not merely barred; it no longer exists as a cause of action. We are thus restrained from doing what we might deem substantial justice if it were not for the statute.

No. 9457.

W. G. BLOCK COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted July 16, 1917. Decided June 14, 1918.

Rates on coal, in carloads, from mines in Illinois to Muscatine, Iowa, not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

J. H. Henderson and *E. H. Scott* for complainant.

R. W. Ropiequet for Coal Operators Traffic Bureau of St. Louis, intervener.

A. P. Humburg, *Kenneth F. Burgess*, *C. B. Cardy*, *Winston, Payne, Strawn & Shaw*, *W. F. Dickinson*, *Wallace T. Hughes*, *R. H. Widdicombe*, *O. W. Dynes*, *J. N. Davis*, *C. P. Stewart*, *F. M. Minor*, *J. N. Elliot*, *D. P. Williams*, and *N. S. Brown* for defendants.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

By Division 3:

The complainant herein alleges that defendants' rates on lump and nut coal, hereinafter called lump coal, in carloads, and on pea and slack coal, hereinafter termed fine coal, in carloads, from Illinois coal fields, other than the Peoria district, to Muscatine, Iowa, are unreasonable, unjustly discriminatory, and unduly prejudical as compared with the rates to Davenport, Clinton, and Burlington, Iowa, and asks for the establishment of reasonable rates. The Coal Operators Traffic Bureau of St. Louis, Mo., intervened in support of the complaint. The rates herein, which are stated in amounts per net ton, were those in effect at the time of hearing. They have since been increased 15 cents per net ton following *The Fifteen Per Cent Case*, 45 I. C. C., 303.

Clinton, Davenport, Muscatine, and Burlington are on the west bank of the Mississippi River. Clinton is 35 miles north of Davenport and Muscatine is 27 miles south of Davenport and 54 miles north of Burlington. The rates assailed are joint rates to Muscatine from points in the Springfield, Centralia, and southern Illinois coal districts. The Springfield district is in approximately the center of

Illinois and the Centralia district is south of the Springfield district and north of the southern Illinois district. The Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, extends from points in these districts to Burlington, Davenport, and Clinton, Mississippi River crossings. There is no railroad bridge or car ferry across the Mississippi River at Muscatine, and no single line extends from the districts in question to that point. Coal originating in these districts on the Burlington, when destined to Muscatine, moves beyond Burlington over the Muscatine, Burlington & Southern Railroad, hereinafter termed the Muscatine; or beyond Rock Island, Ill., over the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island. The greater portion of the coal traffic from these districts originates on the lines of other carriers whose rails do not extend to any of the above destinations. Shipments originating on these lines move through Peoria, Ill., which is north of the Springfield district. Beyond Peoria the distance to Clinton by way of the Chicago & North Western Railway, hereinafter called the North Western, is 119 miles; to Davenport and Muscatine, by way of the Rock Island, 92 miles and 119 miles, respectively; and to Burlington by way of the Burlington, 96 miles. Shipments originating on the Burlington do not move by way of Peoria.

The following table shows the distances and rates on lump and fine coal from representative points on the Burlington in each of the districts in question to Burlington, Davenport, Clinton, and Muscatine:

From—	To—	Distance.	Lump coal.	Fine coal.
		Miles.	*Cents.*	*Cents.*
Girard, Ill.[1]	Burlington	158	106	90
Do	Davenport	190	115	97.5
Do	Clinton	215	115	97.5
Do	Muscatine	[2] 216	125	125
Do	do	[3] 212	125	125
Centralia, Ill.[4]	Burlington	235	120	115
Do	Davenport	266	125	107.5
Do	Clinton	291	125	107.5
Do	Muscatine	[2] 293	145	145
Do	do	[3] 289	145	145
Christopher, Ill.[5]	Burlington	275	140	125
Do	Davenport	306	140	125
Do	Clinton	331	140	125
Do	Muscatine	[2] 333	155	155
Do	do	[3] 329	155	155

[1] Springfield district.
[2] Burlington to the Rock Island and Rock Island beyond.
[3] Burlington to the Burlington and Muscatine beyond.
[4] Centralia district.
[5] Southern Illinois district.

With a few unimportant exceptions the above rates apply from the several districts by way of Peoria.

The average distances to Muscatine, as computed by defendants, are about 206 miles from the Springfield district, 281 miles from the

Centralia district, and 357 miles from the southern Illinois district. It will be observed that while fine coal to Burlington, Davenport, and Clinton from the several districts in question takes a differential under the rates on lump coal, the rates to Muscatine on both lump and fine coal are the same; that on lump coal they exceed the rates to Davenport and Clinton by from 10 to 20 cents; and that on fine coal they exceed the rates to Davenport and Clinton by from 27.5 to 37.5 cents.

The coal used at Muscatine is mainly fine coal, and evidence offered in complainant's behalf was principally by manufacturers of various commodities at Muscatine who use considerable quantities of this coal and who compete with manufacturers of similar articles at Clinton and Davenport, principally the latter point. Complainant does not contend that the rates on either lump or fine coal to Muscatine are unreasonable *per se*, but that Muscatine is subjected to unjust discrimination and undue prejudice by reason of the fact that defendants, while maintaining lower rates on fine coal than on lump coal to Clinton, Davenport, and Burlington, fail to observe such a differential with respect to the rates to Muscatine; and that the rates on both lump and fine coal are unreasonable and unduly prejudicial to the extent that they exceed the rates contemporaneously applicable to Davenport and Clinton.

Complainant urges that as Muscatine is on the Mississippi River it should be placed on a rate equality with Davenport and Clinton and observes that on traffic moving through Peoria the distance to Muscatine by way of the Rock Island is the same as the distance to Clinton by way of the North Western. Complainant shows that from Peoria on the Rock Island and from other points west of Peoria in the so-called Peoria, or Fulton county district, the rates on both lump and fine coal to Muscatine are the same as to Davenport and that in each instance fine coal takes a differential of 10 cents under lump coal, the rates on lump coal being 95 cents and on fine coal 85 cents; and that from points east of the Indiana-Illinois state line the class rates are the same to Muscatine as to Burlington, Davenport, and Clinton.

The general basis for constructing rates on coal from the districts in question to the northwest is by adding to the rates from Peoria differentials of 40 cents from the Springfield district, 60 cents from the Centralia district, and 70 cents from the southern Illinois district. The departure from the general basis with respect to the rates to Davenport and other Mississippi River crossings is due to the fact that the Burlington is the direct line to Burlington, Davenport, and Clinton and that its rates to the latter points, which are influenced by the Illinois intrastate rates are met by the carriers which haul the

traffic by way of Peoria. The situation is described at length in *The Illinois Coal Cases*, 32 I. C. C., 659.

In constructing through rates on coal from Illinois points to many interior Iowa points the rates applicable under the Iowa distance scale are added to the rates to the west bank of the Mississippi River, being based on the west bank point which makes the lowest through rate. For the defendants it was stated that as Muscatine is nearer to some of these Iowa points than is Davenport reductions ranging from a fraction of a cent to 12 cents would result in the through rates to the interior Iowa points if the rates to Muscatine were reduced to the level of those applicable to Davenport. They urge that the location of Muscatine on the Mississippi River does not entitle it to the crossing rates and that for rate-making purposes it might as well be regarded as an interior Iowa point 27 miles west of Davenport, the nearest Mississippi River crossing.

In the following table the rates from the several districts to Muscatine are compared with the rates that would have been applicable if the usual differentials over Peoria had been observed, and with the rates that would have been applicable on the basis of the rates to Davenport plus the then existing Iowa distance scale rates for 27 miles of 50 cents on lump coal and 40 cents on fine coal:

Rates to Muscatine.	From the Springfield district.		From the Centralia district.		From the southern district.	
	Lump coal.	Fine coal.	Lump coal.	Fine coal.	Lump coal.	Fine coal.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
In effect at time of hearing	125	125	145	145	155	155
Based on differentials over Peoria	135	125	155	145	165	155
Based on Davenport	165	137.5	175	147.5	190	165

Defendants point out that the rates to Muscatine are on the Peoria basis as to fine coal and are 10 cents lower than that basis as to lump coal; and that as to both fine and lump coal they are lower than the rates which would be applicable on fine coal if the rates were made on the Davenport combination. They refer to *Alpha Portland Cement Co.* v. *B. & O. R. R. Co.*, 34 I. C. C., 414, and other cases, in which we held that there was no necessity for a differential between rates on fine and lump coal, and state that if they are required to observe a differential between the rates on lump and fine coal to Muscatine they can with propriety increase the rates on lump coal. They urge that the rates to Davenport and Muscatine from the Peoria district are predicated on a one-line haul while coal from the districts in question must move to Muscatine over two or more lines; and that because for distances such as those from the

eastern seaboard to the Mississippi River Muscatine has been given the benefit of the competitive conditions existing at the Mississippi River crossings these defendants ought not to be required to do likewise on traffic from the coal districts in question.

By amended Fourth Section Order No. 3743, issued in connection with *Interior Iowa Cases*, 46 I. C. C., 39, we authorized the carriers to apply the proportional class rates prescribed therein between points in Iowa, on traffic originating east of the Indiana-Illinois state line, on the basis of the short-line distance from the actual river crossings.

We find that the rates assailed are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 9078.

MERCHANTS EXCHANGE OF ST. LOUIS ET AL.

v.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.

Submitted March 16, 1917. Decided June 11, 1918.

Hay in carloads received at St. Louis, Mo., is frequently sold for reshipment to points beyond. The practice of the terminal carriers of requiring shippers to transfer to other cars, at their own expense, shipments of hay received at St. Louis in defective equipment as a condition precedent to rebilling to interstate destinations found unjust and unreasonable and unduly prejudicial. Reparation awarded.

Charles Rippin for complainants.

T. M. Pierce and *J. L. Howell* for the terminal lines at St. Louis.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner:*

Hay in carloads is shipped to St. Louis, Mo., to be sold, and for the purpose of inspection is switched to what are known as the Tyler street team tracks of the St. Louis Terminal Railway Company. These tracks are set apart as "hold tracks" for hay, and a regular market for that commodity has been established there. In some cases the hay is sold to local dealers, and is either unloaded at the Tyler street team tracks or is switched to other tracks in St. Louis designated by the purchasers; in others it is sold to parties who desire to forward the same from St. Louis to interstate destinations in the cars in which it is received. The terminal railroads do not question the right to rebill, except when the cars are in bad order when received at St. Louis; in such cases they require shippers to transfer the loads, at their own expense, to other equipment. It is this requirement which is the subject of the complaint, it being alleged that it is an unreasonable and unduly prejudicial practice. An award of damages is asked on three shipments in amounts equal to the cost of transfer plus the demurrage charges which accrued.

The defendants are 16 trunk lines reaching St. Louis or East St. Louis, Ill., and the St. Louis Terminal Railway Company, and other terminal railways at St. Louis. Hereinafter the latter will be referred to collectively as the terminal company. The trunk lines were not represented at either the hearing or the argument of the case.

When the cars of hay are received by the terminal company they are inspected for physical defects, and are so marked and carded when found in "bad order." Bad-order cars are nevertheless accepted and switched without transfer of lading to the Tyler street team tracks, and in many cases are further switched to other tracks in St. Louis, the reason stated by the terminal company for its acceptance being that it has "every reason to believe from long experience" that such cars will be promptly unloaded in St. Louis. Apparently the practice complained of is of recent origin and was instituted because of the refusal of the trunk lines to accept outbound shipments of hay in defective equipment, and the inability of the terminal company to secure from its connections reimbursement of the cost of transfer in cases where the repairs could not be made without transferring the loads. In some cases in which the terminal company has refused to permit rebilling unless the loading was transferred by the shippers, the consignees placed reconsigning orders with the lines into St. Louis, and the hay moved to the destinations desired in the equipment stated to be defective.

The principal contention of the terminal company was briefly stated by its counsel at the argument in the following language:

> When the car has arrived at destination under the contract of carriage, when the freight has been paid, the shipper has his option either to unload the car, or can during the free time sell the lading out of the car or can pay demurrage and treat the car as a warehouse, and he has an additional privilege which has been accorded: If he leaves the load in the car and has not removed it during the free time or demurrage period, he may call upon the carrier to send that car forward under a new and unlimited contract—limited alone by the condition that the car is fit for service.

The terminal company does not deny that in cases where the shipments are reconsigned the carriers are under the necessity of transferring the lading if the cars are received at the reconsigning point in bad order, or get in bad order at any other point en route, but attempts to draw a distinction between the rights of a shipper availing himself of reconsigning under the carriers' tariffs and of one desiring to ship outbound under new billing, contending that when the original contract of transportation is completed the carriers can not be compelled to enter into a new contract if freight is in defective equipment.

When cars in bad order are accepted by the terminal company, they are subject to all of the rights of the shippers, and one of these, recognized by years of practice by carriers throughout the entire country, is that of rebilling in the same cars. The terminal company does not deny this right, but attempts to limit it by the condition of the car which it has accepted from its connection. To adopt the terminal company's contention would make a substantial right of a

shipper depend upon a condition over which it has no control but which has been created by the carriers themselves, and would permit substantial discriminations between shippers.

The terminal company contends that under the rules of the Master Car Builders' Association, it would have to stand the cost of transferring the loads, in case we should find for the complainants, and that as its earnings per car on this traffic are small, it would result in hardship. The rules governing the relations between common carriers can not be pleaded as justification for unreasonable or unduly prejudicial rates or practices. Without expressing any opinion as to the reasonableness or the proper interpretation of said rules, it appears that in the case of reconsignments of shipments received at St. Louis in bad-order cars, the cost of repairs and of transferring the loads is paid by the line-haul carrier responsible under the Master Car Builders' rules, and there would seem to be no reason why proper modification of the rules can not be made, if, in fact, the present rules need modification for that purpose, in order to remove any injustice to the terminal company.

Upon consideration of the whole record, we are of opinion, and find, that defendants' practice of requiring complainants at their own expense to transfer to other equipments shipment of hay delivered to team tracks in St. Louis or East St. Louis in bad-order cars, as a condition precedent to permitting reshipment of the hay to points beyond St. Louis or East St. Louis, is an unjust and unreasonable and unduly prejudicial practice.

The record shows that the cost of transferring three cars of hay and the demurrage charges accruing on said cars prior to the transfer of the loads was paid and borne by the two individual shippers, parties complainant. We find that the complainants in question have been damaged to that extent by the practice herein condemned. Statements of the details of the demurrage charges and of the transfer expense, supported by receipted bills if the transferring was done by third parties, should be prepared and submitted to the terminal company for its inspection and verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

DANIELS, *Chairman*, dissenting:

The conclusion in this case is, in my judgment, erroneous. It is essentially based upon the following statement in the report of the majority:

> When cars in bad order are accepted by the terminal company, they are subject to all of the rights of the shippers, and one of these, recognized by years of practice by carriers throughout the entire country, is that of rebilling in the same cars.

The decision in this case is thus explicitly posited upon a right "recognized by years of practice by carriers throughout the entire country." There is no allegation that any tariff provision accords the alleged right. Even though the right were accorded generally, it does not seem to me to be reasonable to hold that where the car to be forwarded with its lading under a new contract of carriage is in bad order the shipper's right is clear and unmistakable to cast the cost of transferring the lading upon the carrier.

The point involved seems to be a novel one and not exactly covered by any reported case. It is true that in *Detroit Traffic Asso.* v. *L. S. & M. S. Ry. Co.*, 21 I. C. C., 257, it is said that:

> Any consignee has a right to reship goods received by him, without removal from the car, upon payment of the freight charges to that point, the goods going forward under a new transportation contract.

The case in question involved the reasonableness of a reconsignment charge on coal at Detroit, Mich., and as the context indicates would seem to be *obiter*.

Both complainants and defendants quoted the decision of the Supreme Court in *C., M. & St. P. Ry. Co.* v. *State of Iowa*, 233 U. S., 334. This involved the constitutionality of an order made by the Iowa state railroad commission requiring carriers to use the equipment of connections to transport coal in intrastate commerce without subjecting the shipper to the necessity of removing the lading to a car of the initial carrier in the intrastate shipment. The court upheld the order of the state commission, and remarked:

> It was competent for the state, acting within its jurisdiction and not in hostility to any federal regulation of interstate commerce, to compel the carrier to accept cars which were already loaded and in suitable condition for transportation over its line.

The shipments here involved were new and distinct transactions beginning at St. Louis. It seems to me that a carrier accepting a shipment for St. Louis is under obligation to transport it to St. Louis, and if the shipment arrives safely at destination the carrier has acquitted itself of its entire legal obligation. It is no concern of the shipper that the car is in bad order upon arrival, provided his freight is undamaged. If the shipper desires to reship to another destination, he must make a new contract of carriage. He is entitled to a car in good order for the reshipment, not under the old contract which has been completely executed, but under the new contract. I know of no principle of law that casts upon a carrier the obligation to furnish a car not only in sufficiently good condition to make the particular trip called for in the bill of lading, but also in sufficiently good condition to stand a further haul beyond the destination specified in the contract.

In the case of reconsignment or diversion it would, of course, be true that lading must be removed from a car that becomes unsafe or unserviceable in transit and at the carrier's expense. That is not the case in the present instance.

HARLAN, *Commissioner*, also dissenting:

To have a carload shipment forwarded under a second contract of carriage without being unloaded, after it has arrived and been placed for unloading at the destination named in a prior contract of carriage, is referred to in the majority report as a right. In my judgment it is more properly to be regarded merely as a usage in which the carriers have more or less acquiesced. In general shippers' rights and carriers' duties are to be looked for in the tariffs. And the tariffs of carriers do not specifically superimpose any such right upon a contract of carriage. On the contrary, where no transit is accorded, the tariffs governing the ordinary movement of carload traffic from point to point put upon the shipper the duty of unloading the car at destination, and the delivering carrier ordinarily may not lawfully relieve him of that duty. At most, the rebilling, without unloading, of a carload shipment to another destination, after the first contract of carriage has been completed, is an undefined privilege unsupported by tariff authority and in the exercise of which by shippers there must necessarily be reasonable limitations. In that view a carrier, having regard for the safety of its employees and others, would seem to have a right, and indeed to rest under the duty, not only to the complainants whose property is involved but to other shippers in the same train in which the complainants' property may be forwarded from the reshipping point, to refuse to undertake a new contract of carriage in a bad-order car; and to require it in that event to bear the expense of transferring the load to another car is something it is not obligated to do under the original contract of carriage and which, in my judgment, it may lawfully refuse to do under a second contract of carriage. The suggestion in the majority report that to adopt the contention of the defendants "would permit substantial discriminations between shippers" is not explained, and I am unable to see how a general rule requiring a shipper at destination to unload a bad-order car before it may be rebilled to another destination or bear the expense of transferring the shipment to another car could work an unjust prejudice when made applicable alike to all hay dealers at St. Louis.

On these general grounds I am unable to concur in the report of the Commission.

No. 9781.

SWIFT & COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted December 9, 1917. Decided June 14, 1918.

Rates for the transportation of carload shipments of dressed poultry, butter, and eggs from Sedalia, Mo., to points east of the Indiana-Illinois state line found to have been unreasonable to the extent that they exceeded the combination of rates to and from St. Louis, Mo. Reparation awarded.

R. D. Rynder for complainant.

B. H. Dally, *J. W. Allen*, and *Fred G. Wright* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

It is here alleged that rates for the transportation during the two-year period immediately preceding the filing of the complaint in July, 1917, of carload shipments of butter, eggs, and dressed poultry from Sedalia, Mo., to points east of the Indiana-Illinois state line were unreasonable and unduly prejudicial to the extent that they exceeded the combination of rates to and from St. Louis. Reparation is asked. Rates are stated in cents per 100 pounds.

The components of the combination on St. Louis at the time the shipments moved were a proportional commodity rate of 28½ cents on all of the commodities to St. Louis and first-class rates on dressed poultry and second-class rates on butter and eggs beyond. The rates charged on the shipments which originated on the Missouri Pacific Railway consisted of the St. Louis combination plus a 3-cent bridge toll over the Mississippi River from St. Louis to East St. Louis, Ill. The class rates were the same from St. Louis and East St. Louis. The rates charged on the shipments which originated on the Missouri, Kansas & Texas Railway were the combination of the third-class rate of 32 cents on all of these commodities to East St. Louis and the class rates beyond. The claim is therefore for 3 cents per 100 pounds on the shipments which originated on the Missouri Pacific and for 3½ cents per 100 pounds on the shipments which originated on the Missouri, Kansas & Texas.

The complaint arises from a clause placed in the defendants' tariffs, effective September 1, 1915, which prevented the application of the local rate from St. Louis to points east of the Indiana-Illinois state line on shipments originating at points in certain western states, including Missouri (except St. Louis), and which therefore made the through rate higher than the combination on St. Louis that otherwise would have applied.

The complainant contends that this restrictive clause operated to violate the fourth section, to unlawfully discriminate against through traffic, and to place the burden of proof with respect to the reasonableness of the increased through rate upon the defendants, as a rate increased since January 1, 1910.

The clause in question was modified in January, 1917, so as to make the St. Louis combination apply under the circumstances here shown, as a result of informal conferences with the Commission with respect to its effect upon the through rates on certain other traffic. The defendants do not contest the claim now presented.

The complainant construes the restrictive clause, in its application to trunk line and New England territories, as not placing the restriction apparently intended during the period from September 1, 1915, to January 15, 1916, on the latter of which dates the wording was changed, and therefore suggests that during that period the claim is really for the refund of an overcharge above the published rate. But we view the clause as preventing the application of the local rate from St. Louis on this through traffic both during that period and the subsequent period up to January, 1917.

Upon all the facts we find that the through rates on the shipments covered by the complaint during the period in question were unreasonable to the extent that they exceeded the combination of rates of 28½ cents to St. Louis and the class rates beyond. Reparation will be awarded to the complainant, which has shown itself upon the record to have been the party damaged, upon receipt of a joint statement from the parties showing the amount of reparation due.

Upon the facts of the case no order appears necessary for the future.

HARLAN, *Commissioner:*

No exceptions were filed to the foregoing report, proposed by the examiner who heard the case. After reviewing the record we have reached the conclusion that the report should be, and it hereby is, adopted as the report of the Commission.

No. 9369.

CHICAGO LUMBER & COAL COMPANY
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted March 28, 1917. Decided June 14, 1918.

1. Charges on a carload of yellow-pine lumber from Epley, Miss., to Lattimer Mines, Pa., found to have been illegal.
2. Shipment found to have been misrouted by the Mississippi Central Railroad Company.
3. Reparation awarded.

George Reeves for complainant.
Fred H. Behring for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at East St. Louis, Ill. By complaint, filed October 7, 1916, it alleges that the charges collected by defendants on a carload of yellow-pine lumber shipped August 28, 1915, from Epley, Miss., to Hazelton, Pa., were illegal and unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 31 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 55,400 pounds, originated at Epley on the Mississippi Central Railroad and was consigned to Lattimer Mines, Pa., a nonagency station, for which Hazelton is the billing point. It was routed by the shipper "N. O. & N. E. care of Central States Despatch, Lehigh Valley delivery," and moved over the Mississippi Central to Hattiesburg, Miss.; New Orleans & Northeastern Railroad to Meridian, Miss.; Alabama Great Southern Railroad to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, Ohio; Baltimore & Ohio Southwestern and Baltimore & Ohio railroads to Martinsburg, W. Va.; Cumberland Valley Railroad to Shippensburg, Pa.; Philadelphia & Reading Railway to East Penna. Junction, Pa.; and thence to destination over the Lehigh Valley Railroad. Charges were collected thereon in the sum of $217.72 at a rate of 39.3 cents. At the time the shipment moved New Orleans & Northeastern tariff I. C. C. No. 2709, to which the Mississippi Central was a party, published a joint rate of 31 cents

on yellow-pine lumber, in carloads, from Epley to Philadelphia, Pa., applicable by way of Bristol, Tenn., and the Norfolk & Western Railway, or by way of the Southern Railway and Potomac Yards, Va. The tariff also authorized the application of the rates named therein to points taking the same rates as shown in Central States Despatch Eastbound Guide Book. This guidebook showed Hazelton as taking the Philadelphia rates and under "general instructions" provided as follows:

> Tariffs published in connection with this guidebook, which name through rates from points south of the Ohio and Potomac rivers to basing points specified herein, are applicable only when the property is routed via Mississippi River and Ohio River crossings between East St. Louis, Ill., and Huntington, W. Va., both inclusive, except that the rates published in such tariffs will not apply to points on the Chesapeake & Ohio Railway.

The tariff referred to also contained the following rule:

> The rules and regulations published in "fast freight lines" eastbound guidebook, mentioned above, also apply in connection with rates from points herein to points of destination specified in such guidebook in so far as concerns the movement of the traffic beyond junctions at which shipments are delivered to the above fast freight lines, except that in the event of conflict between the rules and regulations in such guidebooks and rules and regulations in this tariff the rules and regulations in this tariff will apply.

It is evident therefore that the 31-cent rate was not applicable over the route the shipment moved. The rate legally applicable was a combination rate of 35 cents, composed of a local rate of 4 cents to Hattiesburg and a rate of 31 cents beyond, so that the shipment was overcharged $23.82.

It will be noted that the above-mentioned tariff contained no routing beyond Bristol and Potomac Yard other than the designation of the Norfolk & Western beyond Bristol. Under the tariffs in effect the shipment could have moved to Bristol and thence over the Norfolk & Western to Kenova, W. Va., and beyond over the Central States Despatch lines through Huntington, W. Va., over which route the 31-cent rate would have been applicable.

We find the Mississippi Central Railroad Company misrouted the shipment; that complainant paid and bore the charges and was damaged by the misrouting to the extent of the difference between the charges applicable over the route of movement and the charges that would have accrued at the rate of 31 cents per 100 pounds; and that it is entitled to reparation from the Mississippi Central Railroad Company in the sum of $22.16, with interest; also to reparation from all of the participating defendants in the sum of $23.82, with interest, the amount of the overcharge above described.

An appropriate order will be entered.

No. 9721.

MESILLA VALLEY PRODUCE EXCHANGE
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 622 AND 671.

Submitted November 5, 1917. Decided June 14, 1918.

1. Rates on wheat, in carloads, from certain points in Colorado, Kansas, Oklahoma, Nebraska, Illinois, Missouri, and northern Texas, to Las Cruces, N. Mex., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.
2. Fourth section relief denied.

Rufus B. Daniel for complainant.

W. R. Brown for Rio Grande, El Paso & Santa Fe Railroad Company.

J. E. Bailey for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway; and El Paso & Southwestern Railroad Company.

Robert Dunlap, *T. J. Norton*, and *F. E. Andrews* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant alleges that defendants' rates on wheat, in carloads, to Las Cruces, N. Mex., from various points in Colorado, Kansas, Oklahoma, Nebraska, Illinois, and Missouri, shown on pages 31 and 37 of the Atchison, Topeka & Santa Fe Railway's tariff I. C. C. No. 7430, and from various points in Texas, shown on page 42 of the same tariff, are unreasonable, unduly prejudicial, and in violation of the fourth section of the act in that they exceed the rates contemporaneously in effect to El Paso and La Tuna, Tex., to which Las Cruces is intermediate over certain routes. Reparation and the establishment of reasonable and nonprejudicial rates are asked. Those portions of defendants' Fourth Section Applications Nos. 622 and 671 covering the alleged fourth section departures, were heard with this case. Rates are stated in cents per 100 pounds.

The Atchison, Topeka & Santa Fe and the Rio Grande, El Paso & Santa Fe Railroad connect at La Tuña and form the Santa Fe system route through New Mexico to El Paso. Las Cruces is on the line of the former, about 45 and 25 miles north of El Paso and La Tuna, respectively. The gravamen of the complaint is the relationship of the rates to Las Cruces and to El Paso, and the prayer is for rates which shall not exceed those contemporaneously maintained to El Paso. The complainant does not contend that the present El Paso rates should be applied to Las Cruces, but would be satisfied if an equalization were effected by both increases and reductions.

Practically the only evidence submitted by the complainant consisted of comparisons of the rates assailed with rates from the same points to El Paso, where, it was stated, competing flour mills are located. Complainant was unable to state where these mills obtain their wheat. Rates on wheat in carloads from representative points of origin to Las Cruces and El Paso are shown below:

From—	To Las Cruces.	To El Paso.
	Cents.	*Cents.*
Superior, Nebr	58	48
Kansas City, Mo	65	42.5
Wichita, Kans	58	42.5
Denver, Colo	55	43
Fort Worth, Tex	65	26.5

Complainant obtains the bulk of its wheat from territory adjacent to Las Cruces and apparently uses wheat from the origin territory only for blending purposes. Defendants' witness testified that the movement of wheat from that territory to New Mexico points, including Las Cruces, is light.

Defendants explain that while their rates from the Texas points to El Paso and La Tuna are lower than to Las Cruces, the former apply only intrastate, and that the rates from the Texas points to Las Cruces conform to the fourth section. They did not attempt to justify the existing fourth section departures which result from the charging of higher rates from other points of origin to Las Cruces than to El Paso and La Tuna, but stated that following *Corporation Commission of New Mexico* v. *Ry Co.*, 34 I. C. C., 292, they have been readjusting their rates to this territory, and are now prepared to establish rates on wheat from the points of origin, other than those in Texas, to El Paso not lower than to Las Cruces and other intermediate points. This adjustment contemplates increases in the rates to El Paso and material reductions in the rates to Las Cruces, those proposed to each of these points being 54 cents from Superior and

48.5 cents from Kansas City, Wichita, and Denver. The fourth section applications protecting the departures above referred to will be denied to the extent that they are involved.

The only rates from Texas points specifically attacked apply from Fort Worth, Gainesville, and grouped points in northern Texas. Complainant presented no evidence with respect to the rates to Las Cruces from the Fort Worth and Gainesville territory and no movement of wheat from this territory to either Las Cruces or El Paso is shown. The only Texas territory referred to in complainant's evidence was the panhandle section, but rates from this section are not specifically brought in issue by the complaint. Complainant testified that if Las Cruces and El Paso were given the same rates on wheat from Colorado and from the panhandle of Texas this complaint would be satisfied. There was no showing as to the volume of movement from either of these territories of origin to the destinations mentioned. At present the rate on wheat from Amarillo, a typical point of origin in the panhandle section, to Las Cruces is 55 cents, and in connection with the adjustment above referred to defendants propose to reduce it to 38 cents. The intrastate rate to El Paso is 26.5 cents.

In *Railroad Commission of Louisiana* v. *A. H. T. Ry. Co.*, 41 I. C. C., 83, we prescribed reasonable rates to be observed as maxima for the transportation of various commodities, including wheat, between Shreveport, La., and points in Texas, and ordered the removal of undue prejudice found to exist against Shreveport. The intrastate rates from the Texas points to El Paso were established by the carriers to remove such undue prejudice. That case has been reheard and affirmed so far as the rates on wheat are concerned, 48 I. C. C., 312. These rates are based on a graded scale up to 250 miles for hauls in common point territory, and on a set of differentials grading up to 300 miles for hauls in the western portion of Texas, known as differential territory. Under these scales the maximum rate on wheat for any haul in Texas where more than 300 miles thereof is in differential territory is 26.5 cents. The short-line distances over defendants' lines from Fort Worth and Amarillo to El Paso, intrastate, are 615 miles and 656 miles, respectively, and include over 300 miles in differential territory.

Defendants contend that the 26.5-cent rate to El Paso, which would apply for 301 miles, is unduly low for hauls more than twice as long, and they therefore do not attempt to meet it by way of the interstate route through Las Cruces. While the difference between the rates from the Texas points to Las Cruces and to El Paso, intrastate, is large, it is our opinion that the mere existence

of the intrastate distance rates to El Paso without a showing that any shipments ever moved thereunder affords no basis for a condemnation of the interstate rates to Las Cruces.

We find that the rates assailed are not shown to have been or to be unreasonable or unduly prejudicial, and the complaint will be dismissed.

Appropriate orders will be entered.

No. 8706.

HERMAN W. GERSCH
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Submitted October 19, 1916. Decided June 17, 1918.

Defendant's fares between Providence, R. I., and Touisset, South Swansea, and Fall River, Mass., not shown to be unreasonable, but found to be unduly prejudicial as compared with the fares between Providence and Bristol, R. I. Undue prejudice ordered removed.

Robert S. Anthony for complainant.

Nathaniel S. Smith and *Henry J. Hart* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of South Swansea, Mass. By complaint, filed March 4, 1916, he alleges that defendant's fares for the transportation of passengers between Providence, R. I., and Touisset, South Swansea, and Fall River, Mass., are unreasonable and unduly prejudicial as compared with the fares maintained by defendant between Providence and Bristol, R. I. The establishment of reasonable fares for the future is asked.

The stations in question are on defendant's Providence, Warren & Bristol branch line, a standard gauge railroad operated by electricity and extending from Providence to Warren, R. I., where it forks into two branches, one to Bristol. hereinafter called the Bristol branch, and the other through East Warren, R. I., to Touisset, South Swansea,

and Fall River, hereinafter called the Fall River branch. The distances from Providence to Warren, Touisset, South Swansea, Fall River, and Bristol are 11.56, 14.43, 15.86, 19.4, and 15.7 miles, respectively.

Between Providence and points on both branches defendant maintains standard fares of substantially 2½ cents per mile, 2¼-cent mileage book fares, and zone fares of 5 cents per zone of approximately 4 miles, or about 1¼ cents per mile. The zone tickets can be purchased in any quantity and may be used by anyone anywhere on the line at any time. For use between Providence and points on the Bristol branch, however, 60-trip commutation tickets and 46-trip tickets for school children also are sold, neither of which is available on the Fall River branch.

It is not seriously contended, and the evidence wholly fails to prove, that the fares to and from the points on the Fall River branch are in and of themselves unreasonable. The gravamen of the complaint is undue preference of points and travelers on the Bristol branch, by reason of the commutation fares and special fares for school children and undue prejudice to points and travelers on the Fall River branch, whereon the zone tickets afford the lowest available basis of fares.

The zone fare between Providence and Touisset or South Swansea is 20 cents; between Providence and Fall River, 25 cents. While the commutation tickets necessitate a larger initial outlay by the passenger than do the zone tickets and are restricted to individual use between specified stations and for 30-day periods, they and the 46-trip tickets for school children afford lower fares than do the zone tickets on the Fall River branch. A 60-trip commutation ticket good between Providence and Bristol costs $7.30, whereas the zone fares for 60 trips between Providence and Touisset or South Swansea are $12, and between Providence and Fall River, $15. In other words, to or from Touisset or South Swansea the fares are $4.70 higher, while the respective distances are 1.27 miles less and 0.16 miles more than to or from Bristol; to or from Fall River, $7.70 higher for a distance of but 3.7 miles greater. A 46-trip ticket for school children traveling between Providence and Bristol is sold for $3.65, whereas the lowest fares, using the zone tickets, for an equal number of corresponding trips by school children traveling from or to Providence to or from Touisset or South Swansea would be $9.20; to or from Fall River, $11.50.

The low-rate commutation fares and fares for school children were not established voluntarily but upon an order of the Public Utilities Commission of Rhode Island, over defendant's opposition. Of defendant's passenger revenues from the Providence, Warren & Bristol

branch during the year ended June 30, 1915, 96.40 per cent was derived from zone fares and 1.35 per cent from the sale of commutation tickets, while in the ensuing six months period the percentage of commutation revenues increased to 3.18 per cent, with little change in the zone fare percentage.

Upon all the facts of record we find that the fares assailed are not shown to be in and of themselves unreasonable, but that the maintenance of the commutation fares and special fares for school children between Providence and points on the Bristol branch lower than between Providence and the above-named points on the Fall River branch for like distances is, and for the future will be, unduly preferential of points and passengers on the Bristol branch and unduly prejudicial to points and passengers traveling on the Fall River branch. In this connection attention is called to *Commutation Tickets to School Children*, 17 I. C. C., 144.

An appropriate order will be entered.

THE LAKE TERMINAL CASE.

No. 8406 (Sub-No. 11).[1]

NATIONAL TUBE COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted May 11, 1916. Decided June 11, 1918.

1. Principles announced in *General Electric Co.* v. *N. Y. C. & H. R. R. Co.*, 14 I. C. C. 297, reaffirmed and applied; and complaints of the National Tube Company, for reparation on the traffic of its plant at Lorain, in the state of Ohio, during a period of 12½ months when allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. The demands of the Carnegie Steel Company for reparation during the same period dismissed on similar grounds.
2. The present tariffs of the trunk lines serving that plant also required to be readjusted in conformity with the findings and conclusions herein.

Charles MacVeagh, C. A. Severance, and *C. S. Belsterling* for American Steel & Wire Company, National Tube Company, Carnegie Steel Company, and Universal Portland Cement Company.

Wilson & Evans for Jones & Laughlin Steel Company; *Cadwalader, Wickersham & Taft* for Lackawanna Steel Company; *W. F. Morris, jr.*, for Crucible Steel Company of America; *Charles E. Spangenberg* for Corrugated Bar Company; *J. Roy Dickie* for C. G. Hussey & Company; *F. W. H. Clay* for Trimble, Mudge & Company; and *T. F. Trendley* for Jos. Joseph & Brothers Company.

John G. Frazer for Union Railroad Company; *John B. Larner* and *A. B. Shepherd* for Monongahela Connecting Railroad Company; *James R. Garfield* for Newburgh & South Shore Railroad and Lake Terminal Railway; *Van Santvoord Merle-Smith* for South Buffalo Railway Company; *Andrew P. Martin* for Wheeling & Lake Erie Railroad Company and its receiver; *M. V. Semple* for Lorain, Ashland & Southern Railroad Company; and *John Heron* for Wabash Pittsburgh Terminal Railway Company and its receiver.

George Stuart Patterson, Clyde Brown, Frank B. Carpenter, E. B. Boles, J. L. Seager, W. A. Parker, T. H. Burgess, and *Robert F. Dennison* for trunk lines.

[1] This report also embraces No. 8406 (Sub-No. 8), National Tube Company *v.* Lake Terminal Railroad Company et al.; No. 8406 (Sub-No. 9), Same *v.* Same; No. 8406 (Sub-No. 10), Same *v.* Same; No. 8406 (Sub-No. 12), Same *v.* Same; No. 8406 (Sub-No. 20), Carnegie Steel Company *v.* Lake Terminal Railroad Company et al.; No. 8406 (Sub-No. 21), Same *v.* Same; No. 8406 (Sub-No. 22), Same *v.* Same; and No. 8406 (Sub-No. 23), Same *v.* Same.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

On April 1, 1914, certain trunk lines in official classification territory discontinued the payment of allowances to industrial railways for handling interstate traffic into and out of the respective plants by which they were owned or controlled. That action was taken under the Commission's findings in the *Industrial Railways Case*, 29 I. C. C., 212, in which the plant railways of a large group of steel and iron industries were under consideration. In a supplemental majority report in that proceeding, 32 I. C. C., 129, the Commission, in the light of the *Tap Line Cases*, 234 U. S., 1, withdrew the conclusions announced in its original report and thereupon, on April 14, 1915, the payment of allowances was resumed, on a modified basis, to the Monongahela Connecting, the Union, the Newburgh & South Shore, the South Buffalo, and the Lake Terminal railroads. Neither the latter allowances nor those formerly in effect have ever been approved by the Commission; and in the supplemental report just mentioned the Commission said (p. 132):

> We shall, in the exercise of the duty pointed out by the Supreme Court, undertake at the earliest available opportunity to inquire carefully into any of these allowances or divisions which may seem to be unwarranted or unreasonable or to effect unjust discrimination.

In this proceeding the manufacturing interests owning or controlling those five industrial railways are seeking reparation on their inbound and outbound interstate traffic that moved during the non-allowance nterval of 12½ months. The demand is based on their claim that during that period they paid the switching charges of their respective industrial railways in addition to the line-haul rates of the connecting carriers. The complaints are really directed against the trunk lines, by which, prior to April 1, 1914, these switching charges had been absorbed, and the industrial roads are joined as codefendants. The right of the industrial railways just mentioned to claim and receive allowances or divisions has not come before us for decision since the supplemental report was announced. "The primary question" in this proceeding, as counsel for the petitioners presented the issue in oral argument, "is whether these roads over which this traffic moved—that is, the terminal roads—the Newburgh & South Shore, the Lake Terminal, the Monongahela Connecting, the Union, and the South Buffalo are and were, in fact, common carriers."

From the testimony adduced at the hearing and from the record in the *Industrial Railways Case, supra*, which was made a part of this record, we may gather a full understanding not only of the relation of these industrial railways to the several proprietary or controlling industries which they serve, but a full understanding as

well of their location, facilities, equipment, and the character and nature of their operations and of their traffic. The Monongahela Connecting, the Union, the Newburgh & South Shore, and the South Buffalo railroads differ from the Lake Terminal Railroad in that the tracks of the latter are practically confined within the plant of the National Tube Company at Lorain, in the state of Ohio, while the other four industrial lines perform something of a switching service between the rails of the line carriers and their respective plants. We shall therefore discuss in another report the complaints for reparation in which those four industrial lines were made codefendants, and in this report shall consider only the claims for reparation in which the Lake Terminal Railroad has been joined as a codefendant with the Baltimore & Ohio, the New York Central, the New York, Chicago & St. Louis, the Lorain, Ashland & Southern, the Lorain & West Virginia, and the Wheeling & Lake Erie railroads, the trunk lines that serve and with their own rails directly reach this plant of the National Tube Company.

The Lake Terminal Railroad is the plant railway at the Lorain plant of the tube company and both companies are owned in the same interest. Except in the matter of its great size that plant and its plant railways are characteristic and typical of many plants and plant railways scattered throughout the country; and the considerations which compel us to deny the demand of the tube company for reparation in this proceeding, and to hold that the continued payment of allowances to its industrial railroad is unlawful, involve a principle that must be understood as having equal application at other similar industries.

The National Tube Company is one of the numerous large industries that are dominated by the United States Steel Corporation. Its plant at Lorain is described at length in *Industrial Railways Case*, 29 I. C. C., 212, 238, 288. It belongs to the class of plants that occupy many acres of ground covered by a large number of buildings and structures. In addition to its tube mills there are also rolling mills, rail mills, blast furnaces, open-hearth works, Bessemer works, a large ore dock, a dockyard, a brickyard, and a large yard for the storage of rails. Within the plant area is an intricate system of standard and narrow gauge tracks connecting the various buildings and different parts of the plant property. There are also several groups of storage tracks in the plant that are shown on the accompanying map as yards. All these plant tracks, both standard and narrow gauge, are used in one way or another in the manufacturing and internal processes of the industry. At convenient places near the plant gateways have been established the plant interchange tracks hereinafter described, which are sufficient to accommodate a

large number of cars. The plant is surrounded by a fence, but that fact we regard as of no special or controlling importance; without a fence it would still be a plant in the sense in which that phrase is here used.

The right of way of the Baltimore & Ohio Railroad forms the western boundary of the plant, and the interchange tracks just mentioned between that carrier and the plant are quite extensive and were formerly inside the plant but, as the result of a purchase of land by the Baltimore & Ohio from the tube company or its industrial railway, now immediately adjoin the plant. The interchange tracks of the other trunk lines lie outside the eastern boundary of the plant. The line carriers deliver the cars at and take them from these several plant interchange tracks; and this we regard as their duty under their line-haul rates even in cases where that may involve a switching service. The industrial railway takes the cars from the interchange or storage tracks and moves them to various points within the plant as required. The industrial railway also moves loaded and empty cars from different points within the plant and delivers them to the line carriers at the plant interchange tracks. For this service by its industrial railway during the period of the action, between the interchange tracks with the line carriers and various points within the plant, the tube company is here demanding reparation from the line carriers. The Carnegie Steel Company, the only other complainant, demands reparation on shipments of iron ore handled through the plant, as hereinafter explained, by the tube company's industrial railway and delivered on the interchange tracks to the line carriers. The sole question for determination is whether an allowance therefor out of the line carriers' rates is lawful; or, to put the inquiry in another form, where does transportation by the line carriers under their line-haul rates begin and end in the case of an industrial plant like the one described of record?

At the time of the hearing in the *Industrial Railways Case, supra,* the industrial railway of the tube company was operating 62 miles of track, all of which was within the plant; in its annual report for 1917 it is stated that "this company no longer maintains and operates the 31.46 miles of yards, tracks, and sidings owned by the National Tube Company, as shown on * * * last year's report." In addition there was also a narrow gauge railway within the plant about 8 or 10 miles in length that was being operated directly by the tube company, and on which, during the year 1911, when the plant was running to only 70 or 80 per cent of its capacity, there were nearly 300,000 interworks switching movements. These narrow gauge tracks are regarded by the complainant as purely a plant facility and are not directly involved in this proceeding During the year 1911

the allowances by the line carriers to the industrial railway amounted to over $372,000, which approximated its entire operating expense for that year, including the expense of its interworks switching for the tube company. The plant railway also yielded a net profit to the industry of some $39,000 in per diem reclaims and gave it some substantial advantages in the matter of demurrage that were not disclosed of record in detail. Its annual report for 1917 shows that it collected $18,355 in demurrage charges, all but a very small part of which we may fairly assume was paid to it by the tube company. On December 31, 1911, the Lake Terminal Railroad Company declared a dividend of 10 per cent out of its accumulated surplus; and our records show that it paid dividends of $60,000 each in 1913 and 1914. In 1915 no allowances were paid to it, as heretofore explained, and no dividends were declared by the industrial railway. But in 1916 a similar dividend of $60,000 was paid after the allowances had been resumed on the reduced basis of 8 cents a ton, long or short, as the traffic was rated. For the year 1917 its net operating revenues showed a deficit of some $19,000.

The Lake Terminal Railroad Company is incorporated under the laws of the state of Ohio as a railroad company. But except in a very limited way it is not accessible to the public. Its tracks are not only completely enveloped by the plant but are inclosed within a plant fence as heretofore stated; the industry is thus securely protected against any demand upon its plant railway by the public for a service of transportation, and the plant railway is enabled to devote its facilities and entire energies to serving the proprietary industry, as was apparently intended. It was said of certain plant railways in the *Second Industrial Railways Case*, 34 I. C. C., 596, 601, that "access to them may be obtained only through the permission of the controlling industry. In such circumstances the holding out is not genuine." It is questionable, even if the tube company here before us should permit ingress to its plant and the use of its plant property and facilities for public transportation purposes, whether the industrial railway's facilities could be considered as being reasonably accessible to the public, for its tracks and facilities within the plant inclosure were arranged and laid out for the benefit and to meet the requirements of the industry; and the record conclusively shows that the industrial railway is operated for the convenience of the industry and not in any degree for the convenience of the public. A spur track seems to emerge from the plant fence and, with a switching movement of over three miles inside the plant, traffic over it may reach an outside coal yard that is within a few hundred feet of the trunk lines. Apparently there is one team track that projects through the plant fence, but the two or three other public

team tracks, so-called, are within the plant and the plant gates giving access to them are guarded by watchmen of the tube company. The dock, hereinbefore mentioned, is a private dock, as we understand the record, and may not be used by the public except by the grace of the tube company. During the year 1911 the entire traffic handled by the plant railway for all outside interests amounted to a little over one-quarter of 1 per cent, and apparently all of it had to move through the plant. It is to be observed in this connection that the outside and nonproprietary interests have asked for no reparation on shipments by them, if any there were, during the nonallowance period.

While the question of the physical character of this industrial railway and its operations is under consideration, it may be well to refer to one or two other facts that are shown of record. In the first place it was conceded that rails and locomotives are indispensable in the industrial operations of the tube company and the need of such plant facilities is demonstrated by the large interworks switching movement and other facts shown of record. It was also shown that much of this interworks service must necessarily be performed with the same power that interchanges cars with the trunk lines and under the same direction or supervision. The record also shows that the coke and limestone received from the trunk lines must, in the orderly and successful conduct of the industrial operations, be placed at the furnaces at stated intervals and in the proper proportions. The coal received from the trunk lines likewise remains on the hold tracks awaiting the convenience of the industry. In other ways that we need not dwell upon the record shows the operations of the plant railway to be closely and vitally connected with the industrial operations. At the time of the hearing of the *Industrial Railways Case, supra*, it was shown that the Lake Terminal was using 18 locomotives and quite a number of cars, while the industry itself on its narrow gauge track was operating 17 locomotives and over 500 cars. Its superintendent, describing its operations, testified that:

> The intermill service at the plant of the tube company is so interwoven with the interchange service that it is necessary for the railroad performing the interchange service to handle the intermill business. The situation at the furnaces and skelp mill is such that the intermill service must necessarily be taken care of by the same power that brings in the cars, on account of it being meshed right together.

With such a lacework of standard guage and narrow gauge tracks running into and about various parts of the plant and all contained within the plant and inaccessible to shippers, as before explained, with some 35 locomotives and 700 or 800 cars of various kinds in use, there is little basis for the contention that the Lake Terminal

Railroad was intended to be or has a real and substantial opportunity to be anything other than a plant facility. That is its actual daily function for the controlling industry.

In several proceedings before this Commission the facts developed upon the hearings led us to question the bona fides of the holding out by industrial railroads claiming to be common carriers. *A., T. & S. F. R. R. Co.* v. *Kansas City Stock Yards Co.*, 33 I. C. C., 92, 101; *Second Industrial Railways Case*, 34 I. C. C., 596, 601, 605. And unless the mere fact that the Lake Terminal Railroad Company is incorporated under the general railroad law of the state of Ohio, as hereinbefore stated, is itself sufficient to make it a common carrier in the eye of the law, without regard to its real purpose and actual relation to the tube company, there would seem to be no substantial basis for its claim to the status of a common carrier. The record makes it clear that it does not offer in good faith to serve the general public as a common carrier; that it makes no real effort to secure traffic from the general public; that the general public has no reasonable access to its facilities; and that it can not handle the traffic of the general public as traffic is ordinarily handled by a common carrier; but that its facilities and its services must be and are subordinated to the necessities and accommodated to the requirements of the controlling industry. Its primary purpose and first duty day by day is to serve that particular industry. After carefully weighing all the evidence before us, we find that its daily work for the tube plant at Lorain was during the period of the action, and now is, that of a plant facility.

But even a plant facility under section 15 of the act may lawfully have an allowance out of a carrier's line-haul rate when performing a service of carriage for it. The important and really controlling inquiry in this proceeding therefore is, as hereinbefore stated, to ascertain, upon the facts shown of record, where the service of the defendant trunk lines on the traffic of this plant may be said lawfully to commence and end under their line-haul rates. During the nonallowance period from April 1, 1914, to April 14, 1915, the service commenced and ended at the several plant interchange points hereinbefore described; the tariffs of the trunk lines expressly so provided and that settles the question so far as that period is concerned. Nor may there be any readjustment for that period in the form of reparation unless the evidence of record convincingly shows some unjust discrimination by the defendant carriers against the tube company in terminating their service at the plant interchange points or unless the Commission is satisfied upon the whole record that the termination of their service at those points was unreasonable. It is true that the defendant line carriers, after withdrawing the allowances and until they were restored, did less service for the industry under the line-

haul rates than they had theretofore been doing. But any burden of proof that may be said to have grown out of that fact would seem to be fully met by a reference to the findings of the Commission in the *Industrial Railways Case, supra,* upon which the withdrawal of allowances was based. Moreover, the claimants made no substantial effort of record to show either any unjust discriminations or any undue preferences in the rate adjustment in effect during the period covered by this action. In that connection it is to be noted not only that all allowances during that period were withdrawn by all the line carriers, from Chicago east, from all the industrial railways of all the competitors of the National Tube Company that had theretofore been receiving allowances, but that a large number of other steel and iron industries during the same period, and theretofore, were doing the same kind of work at their plants with their own power and without any allowances at all out of the line-haul rates. A large number of industries now do their own plant spotting at their own cost and without any compensation out of the line-haul rates. Under these conditions, to award reparation to the National Tube Company for the period in question, or to permit allowances for the future, would clearly effect an undue preference of that company. Nor did the claimant make any substantial effort to show any unreasonableness in the rate situation in effect during that period. There is then no legal basis for an award of damages.

But there are other considerations that require us to deny the reparation demanded and also to hold the continuance of allowances to this industrial railway by the defendant line carriers to be unlawful and unduly preferential.

It has not been the custom of carriers either to spot cars without charge within industrial plants, as that term is here used, or to make allowances therefor out of their line-haul rates when the spotting is done by the industries themselves. *Second Industrial Railways Case,* 34 I. C. C., 596, 603. Both the free service and the allowance are inconsistent with the general basis upon which the line-haul rates of the country have been adjusted, and in individual cases where the service has been or is performed under the line-haul rate or an allowance therefor has been or is made out of the line-haul rate, it is a burden that has been superimposed upon the rate purely as the outgrowth of competition. This abundantly appears not only upon this record but upon the records in other proceedings; and expressions to be found in other reports of this Commission that may seem to have the contrary import must be understood in a qualified sense. Upon this record there is a long list of steel and iron industries which, as before stated, during the period of the action and for years theretofore, had been doing their own plant spotting without any com-

pensation from the line carriers. At this time, as we have said, there are many industries with systems of rails inside their plants, for which no spotting service is performed by the line carriers beyond the plant interchange tracks and which receive no allowances out of the carriers' rates for doing the work themselves. "We come back then," says the court in *N. Y. C. & H. R. R. R. Co.* v. *General Electric Co.*, 219 N. Y., 227, where the practice of carriers in the matter of plant spotting was exhaustively examined, "to the test, which, vague as it is, remains the only safe one, and we ask ourselves whether, in the light of all the circumstances, such a form of delivery is customary or reasonable. That it is not customary is established, we think, by uncontroverted evidence."

It has long been the custom, with a few exceptions, for the carriers to spot cars, without any charge in addition to the line-haul rate, upon what are known as private spur or switch tracks. The distinction between spur tracks or sidings and plant tracks, while not always of easy application in every case, is too well understood to require any special explanation here. Such a distinction, not only in fact but in the custom of carriers, is recognized by all who are familiar with transportation history and practices. The same court in the case just cited points out that spotting cars upon short and direct sidings is a service that has little kinship to plant spotting. "The difference," it says, "may be one of degree, but here, as so often in the law, such differences are vital." In our judgment there is no distinction in the entire range of railroad services that is more vital in the fair and reasonble distribution of the burdens of transportation than the distinction between the spotting of cars on the ordinary private spur track or siding and the spotting of cars on the intricate network of tracks beyond the plant interchange tracks which these great establishments require as indispensable plant facilities and as an economic necessity in their industrial operations.

The typical spur track or siding ordinarily does not exceed a few hundred feet in length. There are no cross tracks or operations by an industry to interfere with the switching service, and the work of spotting a car at a factory or warehouse door on such a siding is direct and usually simple and may be done ordinarily at the convenience of the carrier. As hereinafter explained, such a spotting service has a close resemblance to the service of placing a car on plant interchange tracks, which are often about as far from the line carrier's rails as the length of the ordinary spur track; and in the just weighing of values the latter service, in our judgment, should be regarded as a fair equivalent of the spur track service. This was the view taken by the Commission in what is commonly referred to as the *Los Angeles Case*, 18 I. C. C., 310. We were there consider-

ing the relation to the carriers' service of the ordinary spur track or siding leading to coal yards, elevators, warehouses, stone quarries, and to similar industries. These tracks are there spoken of as "industrial spurs." After referring to *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co.* v. *D. L. & W. R. R. Co.*, 14 I. C. C., 246; and *Chicago & A. Ry. Co.* v. *United States*, 156 Fed., 558, as authoritative on the question, the Commission said (p. 313):

> Such industrial spurs as are here considered, however, are of a totally different character and of a different nature from those considered in these three named cases. They correspond rather to the railroad tracks leading to the interchange tracks with such industries, and the switching movement given by the carriers without extra charge to such interchange tracks passed unquestioned in the above cases. It was assumed by court and Commission that there was no violation of law in placing a car at a point where an industry engine could connect with it and take it within the plant.

That has been both the theory and the practice of our rail carriers except where they have been drawn away from sound principles by competition for the large traffic, inbound and outbound, of great industries. That is to say, they have customarily made no charge, as hereinbefore stated, in addition to their line-haul rates, either for spotting cars on private spur tracks or sidings or for placing cars at the point of interchange with the plants of industries having their own plant tracks or industrial rails. In point of distance and in point of time, labor, and expense to the line carriers the two services are quite similar. But the further service, after a car has been placed at the plant interchange point, of spotting it within the plant, usually at the convenience and often under the direction of the industry, is a service that has no counterpart on private spur tracks or sidings. This after service within the plant must ordinarily be accommodated to the needs of the industry and can not be performed so as to accord with the exigencies of the line carrier's operations. If the line carrier attempted to distribute cars within a plant immediately upon their arrival at the plant interchange point "it would, in effect, take possession of the works and put" the industry "out of business." *N. Y. C. & H. R. R. R. Co.* v. *General Electric Co.*, *supra*. And the contention of the General Electric Company that lawful delivery may be effected by the line-haul carriers only by placing the inbound cars at the unloading points within the industry or by paying the industry for doing the service itself, is there said by the court not to conform "to the standard of custom. We think it fails also when we test it by the standard of reason."

The case just cited from the court of appeals of the state of New York deals very broadly with the plant spotting question and well merits a careful examination. As we have just seen, it fully recog-

nizes the distinction between the service by the line carriers on private spur tracks or sidings and the spotting service within a plant. The case relates to the same plant of the General Electric Company and grew out of the same facts and conditions that were under consideration in *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co., supra.* In the latter case, it appeared that the General Electric Company was doing the spotting work within its plant with its own power because, as its chief witness said (id. p. 244), "it would not be practicable for the railroads to undertake to place cars" within the plant "entirely at their own convenience, as they might do in operating spur tracks or private side tracks; the demands of the industry are too great and too incessant." This, we may pause here to remark, the record before us shows to be substantially the case also at the Lorain plant of the National Tube Company. The General Electric Company, not being willing, therefore, to have the line carriers spot cars within its plant, did the work itself; and its contention was that as the line carriers were under the obligation by their contract of carriage to spot cars within the plant, they should compensate the electric company for doing the work with its own power. After pointing out that reparation must ordinarily be predicated upon a failure or refusal to perform a legal duty and not upon the fact that the claimant had voluntarily undertaken to perform the work itself, the Commission said (id., p. 244):

> But aside from that suggestion, we expressly hold that carriers are under no duty to extend their transportation obligations with the extension of great industrial plants like that of the complainant. They can not be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. Their obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange. In our judgment the complainant does nothing within its plant which it can lawfully call upon the defendants to do for it, and therefore nothing for which it may lawfully demand compensation.

The same doctrine was announced in *Crane Iron Works* v. *C. R. R. Co. of N. J.*, 17 I. C. C., 514, 520, where the complainant, among other contentions, urged that its freight charges, made up of the line-haul rate and of the switching charges of its own plant railway from the interchange tracks into the plant, were unreasonable by the amount of the switching charges. The Commission found it unnecessary to consider any question of reasonableness because it found that the delivery by the defendant line carrier—

> is completed when cars are placed upon the interchange track and that it owes no duty to the complainant to receive loaded cars from it until they are put upon that track * * *.

This view seems to have been definitely accepted by the Public Service Commission of the Second District of New York both as a

general principle and as a conclusion applicable to the particular plant of the General Electric Company hereinbefore mentioned. In *General Electric Co.* v. *N. Y. C. and D. & H. Cos.*, 2 P. S. C., 580, where a demurrage question was involved, that commission said (p. 583):

> The Interstate Commerce Commission and the courts have fully settled the duty of the carrier with reference to delivery for industrial plants and have fixed the interchange track as the place where the carrier's obligation to deliver is discharged. In *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, 14 I. C. C., 237, that Commission ruled that interior switching within the plant of complainant is not railroad service; that the carrier's duty is fully discharged when the inbound car is placed on the interchange track, and that such duty does not begin as to the outbound car until it has been placed on the interchange track. The case of *Solvay Process Co.* v. *D., L. & W. R. R. Co.*, 14 I. C. C., 246, is to the same effect. The case in the United States court of appeals of *Chicago & Alton R. R. Co.* v. *United States*, 156 Fed., 558, and which was affirmed by the United States Supreme Court, established the same doctrine. The plant facilities there involved were distinctly held not to be instrumentalities for use by the Chicago & Alton in discharging its duties to the public.

The same principle applies in the proceeding now before us; and upon the record we find that the National Tube Company during the period covered by this action performed no work within its plant, either directly or through its plant railway, which it could lawfully have called upon the defendant line carriers to do for it, and therefore did no service for the line carriers for which it lawfully could demand compensation. The same ruling must be made respecting the allowances now being paid by the line carriers to the National Tube Company; the obligation of a common carrier service by the line carrier defendants does not extend through the network of interior switching tracks in this great plant, and any service by the defendant line carriers within the plant, without charge in addition to their line-haul rates, or any compensation out of their line-haul rates to the complainant or to its industrial railway for performing the service, is unduly preferential of the complainant under the circumstances disclosed of record and is therefore unlawful. These conclusions must necessarily result from the application of the principles, announced in *General Electric Co.* v. *N. Y. C. & H. R. R. Co.*, *supra*, to the facts shown on the record before us and to all other industries where similar conditions exist. That case has repeatedly been cited with approval in other cases before the Commission and must now be accepted as the settled view of the Commission with respect to such conditions as are under consideration here. The case, as we shall see, has also had the approval of the courts.

In the *Tap Line Cases*, 234 U. S., 1, 23, where entirely different conditions were involved and a ruling made which has no relation to such conditions as are under review in these complaints, the court

referred, and apparently with full approval, to the fact that in *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, *supra*, this Commission has defined a "network of switch tracks constructed to meet the necessities of the business" as plant facilities. The court there says (id., p. 23):

> These systems of internal trackage were not common carriers, and however extensive, were intended to and did furnish service for the plants which owned and operated them.

In the *Los Angeles Switching Case*, 234 U. S., 294, 307, 310, the court, after pointing out that the Commission's conclusions, namely, that the industrial spur tracks and sidings at Los Angeles constituted a part of the carrier's public terminals and that the service upon them was similar to the service on team tracks, were findings of fact, and therefore not open to review, refers, with approval, to the distinction that had been drawn by the Commission between spur tracks and "mere plant facilities such as were under consideration" in *General Electric Co.* v. *N. Y. C. & H. R. R. R. Co.*, *supra*. The court refers also to the distinction between the delivery of traffic at concerns located on spur tracks or sidings and "deliveries through a system of interior switching tracks constructed as plant facilities." This distinction was further emphasized by the Commission in that proceeding by pointing out that we must not overlook the fact that "the delivery given on an industrial spur is not supplemental to any other delivery." *The Los Angeles Case*, 18 I. C. C., 310, 317.

In *Manufacturers Ry. Co.* v. *U. S.*, 246 U. S., 457, the same court states that the evidence in the case tended to show, if it did not render it clear, that more than one-third of the yards and tracks of that company were used almost, if not quite exclusively, by the proprietary brewery, and that a question was raised whether some of the other yards, like those previously mentioned, were not "actually used rather as parts of the brewery plant than as parts of the transportation system of the railroad." The court then makes this important and illuminating observation (id., p. 496):

> The finding of the Commission that the railway is for the purposes of its decision a common carrier (a finding not now in question), does not have the necessary effect of impressing all of its property with the character of property employed in the service of the public. The Commission recognized that there was a question whether a part of the service performed by the railway was not a plant-facility service rather than that of a common carrier.

There remain for consideration the separate complaints of the Carnegie Steel Company against those line carriers which, during the period of the action, transported ex lake iron ore to its furnaces, at

several points in Ohio and Pennsylvania, from the plant interchange tracks of this same Lorain plant of the National Tube Company. During that period the line carriers did not absorb the charges of the Lake Terminal for its service in moving the ore from the dock within the plant, hereinbefore mentioned, to the plant interchange points, but collected their line-haul rate from the plant interchange points, leaving the charges of the Lake Terminal Company to be paid by the Carnegie Steel Company in addition to the line-haul rates. The Carnegie Steel Company contends that it was therefore overcharged to the extent of the Lake Terminal's charges.

The ore originated in the Lake Superior ore region and the mines from which it came, the rail lines that carried it to the head of the lakes, the steamships that moved it from that point through the lakes to this dock within the tube company's plant at Lorain, and the tube company itself, together with it plant railway, are all constituent members of the United States Steel Corporation, as shown by the records before us. This fact has no bearing on the question under consideration beyond the tendency it indicates on the part of many large industries to handle their own traffic with their own facilities when they can, and somewhat in disregard of the underlying principle of the commodities clause of the act to regulate commerce. The National Tube Company requires large quantities of ore; and ore from the mines mentioned is delivered to it by the affiliated ore boats upon its own dock within the confines of its own plant and a portion of it is thence moved to its own furnaces at Lorain in the grades and quantities desired, by its own plant railway. Some of the ore is also shipped to other furnaces of the tube company at interior points. The Carnegie Steel Company is another subsidiary company of the steel corporation. Some of the ore that reached its furnaces in Ohio and Pennsylvania during the period in question was discharged from the same privately owned vessels of the steel corporation on the same dock of the tube company and handled through the latter company's plant from that point to the line carriers at the plant interchange tracks by the same plant railway that we have found to be a plant facility in the service it performs for the tube company. While some adjustment may be required as between the Carnegie Steel Company and the tube company or its plant railway, we do not regard the movement of the ore through the tube company's plant as any part of a service of common carriage by the defendant line carriers. Under the conditions shown of record their service commences, as it also ends, at the plant interchange tracks. The Carnegie Steel Company's ore was not received by the tube company's industrial railway at a public freight station or on a public team track but at a point within the private grounds of the tube company and

by the favor of the interests in control. We do not understand from the record that any other shipper of ore or of other commodities could, as of right, make delivery to the industrial railway at that point and demand a service of common carriage by the industrial railway. In *Iron Ore Rate Cases*, 41 I. C. C., 181, and 44 I. C. C., 368, we found the dock of the National Tube Company at Lorain to be a private dock and that it did not hold itself out as a public dock, and we declined to require the trunk line carriers to make an allowance to it for handling and storing ore. That finding was based upon the formal statements by the tube company, of record in that case, that the so-called National Dock "is a part of the Lorain plant of the National Tube Company"; that "the machinery and equipment have always been a part of the Lorain plant"; and that "the dock and the ore handling machinery were installed primarily for handling ore for the blast furnaces of the Lorain plant and their commercial use is only incidental." There is nothing in this record that tends to qualify those statements. In the report last cited it was pointed out (p. 376) that none of the private docks at the lower lake ports is located on the rails of the line haul carriers, and to reach each of them involves the use of tracks and facilities of an industrial railway; and it was further found that a reasonable rate on ore from the private docks served by short line railroads that are entitled to receive allowances out of the through rates would be 4 cents per long ton higher than the line haul rates therein prescribed to apply on shipments from the public railroad docks. The report in question was issued on April 25, 1917, and since the dates upon which rates were established in accordance therewith the line-haul rates of the trunk line carriers have not applied from the dock of the National Tube Company or other private docks. But the finding as to rates from private docks applied only to such docks as were reached by the rails of industrial railways entitled to receive allowances out of the through rates; and since we have found herein that the work done by the Lake Terminal Railroad is a plant service and not public transportation we must also find that the trunk line carriers may not lawfully extend their rates over the tracks of this industrial railway to the private dock of the tube company and that transportation on the ore from this dock for the Carnegie Steel Company or others does not begin until the loaded cars are delivered to the trunk line carriers on the plant interchange tracks.

It is unnecessary to prolong the discussion. During the period of the action the tariffs of the defendant line carriers lawfully and properly provided that their rates on this ore of the Carnegie Steel Company commenced at the tube company's plant interchange tracks, and any allowance at this time for a service, which we find from all

the facts of record not to be a part of a service of transportation, would be an unlawful preference of the Carnegie Steel Company. The present tariffs of the line carriers should therefore be adjusted accordingly.

There are hundreds of short lines of railroad owned by or in the interest of the particular industry that they respectively serve, and the conditions differ widely in many cases. For many years the trunk lines have granted allowances to some of them, while at the same time refusing such allowances to others. In view of the variance of opinion entertained in the Commission and elsewhere upon the many important and difficult questions so frequently arising out of the relations between the trunk line carriers and industries with industrial railways, it seems desirable that the rulings in this case, which, as before stated, presents conditions that are fairly characteristic, should be reviewed by the courts in order that some definite principle may be judicially established by which we may hereafter be guided in such cases as they arise.

It is suggested that the outcome of the conclusions here reached will be "an immense increase in freight charges paid by shippers with no increase in the service rendered." It would, we think, be a sounder and more logical view of the situation to say that the outcome will be to prevent unlawful contributions to industries by line carriers in the form of free services or allowances, and to place upon industries an expense in connection with their industrial operations which in many cases is now being borne for them by the line carriers.

It follows from all that has been said, and we find, that the service performed between the plant loading and unloading points and the plant interchange tracks hereinbefore described, by the Lake Terminal Railroad Company, is a plant service and is not a service of transportation which may be included in and paid for out of the line rates; and that any allowances or divisions by the line carriers out of the line rates on account of such plant service is unlawful and would result in undue or unreasonable preferences and unjust discriminations. These complaints must therefore be dismissed and an order will be entered directing the line-carrier defendants to cease and desist for a period of two years from making any such allowances or divisions.

HALL, *Commissioner*, dissenting:

For many years prior to April 1, 1914, certain defendants, hereinafter termed the trunk lines, published tariffs providing for the absorption of the switching charges of various industrial railroads, including the Lake Terminal Railroad, also a defendant, hereinafter called the Lake Terminal, under the conditions therein stated. Shippers located on the Lake Terminal were thereby accorded the

same basis of rates as shippers located on the trunk lines in the same rate districts.

In the *Industrial Railways Case*, 29 I. C. C. 212, decided January 20, 1914, we found that certain industrial roads, including the Lake Terminal, were plant facilities rather than common carriers, and, effective April 1, 1914, the trunk lines discontinued these absorptions on interstate shipments. They attempted like discontinuance on intrastate traffic, but without success, as the state authorities held that the Lake Terminal was a common carrier.

Subsequently the Supreme Court in the *Tap Line Cases*, 234 U. S. 1, laid down general rules for determining the status of a railroad claiming to be a common carrier, and on November 2, 1914, in our supplemental report in the *Industrial Railways Case*, 32 I. C. C. 129, we said:

> We think that in the light of the decision of the Supreme Court in the *Tap Line Cases* it is our duty to so modify our findings in the original report herein as to permit the trunk line roads, if they so elect, to arrange by agreement with any of the industrial roads mentioned in our former report which are common carriers under the test applied by the Supreme Court in the *Tap Line Cases*, and which perform a service of transportation, for a reasonable compensation for such service in the form of switching charges or divisions of joint through rates.

Thereafter the defendant trunk lines filed with us a stipulation between them and certain industrial roads, among them the Lake Terminal, and pursuant thereto on April 14, 1915, resumed absorption of switching charges in the amounts specified in the stipulation, thereby restoring to plants located on said industrial roads the rate adjustment existing prior to April 1, 1914.

During the period of nonabsorption shippers to and from points on the Lake Terminal were compelled to pay its switching charges on interstate shipments in addition to the district rates and were thus at a disadvantage to the extent of the switching charges as compared with competitors shipping to or from points in the same rate districts which were located on the trunk lines. The proceedings before us are claims for reparation in specified amounts to the basis of the district rates contemporaneously in effect.

Reparation is sought on the ground, primarily, that the total charges exacted were unreasonable, and, secondarily, that they were unduly prejudicial. As stated by counsel for complainants:

> What we are claiming here is that between the 1st of April, 1914, and the 14th of April, 1915, we should be put in exactly the same situation we would have been put in if those rates had not been changed on April 1, 1914, under a misapprehension of what the law was.

It was testified that none of the claims covers plant service. Complainants showed that they paid and bore the charges, and counsel

for the trunk lines conceded that there is no dispute "as to the amount of payment and the fact of payment" by complainants.

The trunk line defendants submitted no evidence, but were represented at the hearing by counsel, cross-examined witnesses, filed a brief, and participated in the oral argument.

In the course of the hearing it was agreed by counsel that the "record in 4181, *Industrial Railways Case, supra*, is in this case for the purposes of this case." No copy of the portions relied upon was introduced as an exhibit as provided by rule XIII of our Rules of Practice.

The majority report is based more upon the record in the *Industrial Railways Case* than on evidence introduced in these proceedings. Whether or not the record in that case made in 1912 accurately portrays conditions existing between April 1, 1914, and April 14, 1915, does not appear, and the terms employed in the majority report, such as "allowance," "plant facility," and "plant interchange tracks," assume as facts matters which are material to the conclusions there reached, and which were neither admitted nor proved in these proceedings.

From the evidence adduced in the present record it appears that shippers on the line of the Lake Terminal are in the Cleveland-Lorain rate district; that it is the custom in that district for the trunk lines to apply the rate from point of loading and to the point of delivery; that this has been the practice since the beginning; and that there has never been any deviation from it excepting in this case from April 1, 1914, to April 14, 1915; that between the dates named the National Tube Company and 33 other shippers paid the higher charges; that the tube company has a narrow gauge industrial road, which is entirely separate from the Lake Terminal, and performs the services connected with manufacture and almost all of the intraplant service, having and using 18 locomotives and 655 cars; that such service as was performed by the Lake Terminal in moving cars from one point on its line to another was charged directly against the industry, and is not covered by these claims; and that the transportation covered by these claims for reparation was confined to the Lake Terminal's part in through shipments over the trunk lines. On this point I quote from the record:

EXAMINER. Will the witness state clearly what service is involved in this reparation claim?

WITNESS. Absolutely nothing, your honor, except the terminal charges on interchange traffic between the trunk lines and the Lake Terminal Railroad.

EXAMINER. What services are covered by these charges?

WITNESS. All of the terminal service consisting of interchange switching from the trunk lines into a classification yard and weighing both the empties and the loads on outbound shipments; it is regular trunk-line transportation service that the trunk lines are performing for many concerns in the Cleveland-Lorain district.

COUNSEL. Is that service which the Lake Terminal Railway performs, which you call the terminal transportation service, is that the customary terminal transportation service involving the placement of the car for loading and unloading?

WITNESS. Yes, sir.

COUNSEL. Is that similar to the customary terminal transportation service performed by the trunk-line carriers?

WITNESS. It is; yes, sir; just the same as the railroads perform everywhere now.

COUNSEL. These claims cover, as I understand, only the expense of performing the terminal transportation service?

WITNESS. Yes, sir.

COUNSEL. That is the customary terminal transportation service?

WITNESS. Yes.

COUNSEL. And does not include any expense of intramill or local service over the line of the Lake Terminal Railway?

WITNESS. No, sir; not at all.

Here, then, is an affirmative showing of a service in interstate transportation performed by the switching road for which it publishes switching charges in tariffs on file with us. Those charges must be paid by somebody. During the 12½-months period they were paid by the shippers. Except for that period they have always been paid by its trunk line connections under tariff provisions for absorption, such as are customarily found in the tariffs of carriers having the line haul on traffic to or from industries served by other carriers. During the 12½ months shippers paid the line-haul rate *plus* the switching charge for no greater or other service than they received before and after that period on payment of the line-haul or district rate. The statute casts upon the participating carriers the burden of justifying the transportation charges so increased during that period, and this burden they have not borne. The shippers claim to have been damaged by the additional charge. They have had to meet the prices of competitors in the same district located on the trunk line who received like service during that period without having to pay the switching charge in addition to the district rate, and reparation is sought accordingly.

That is the case which the complainants bring here against the trunk line carriers and the Lake Terminal.

It is said in the majority report that while the industrial roads are joined as codefendants, the complaints are really directed against the trunk lines, and that the tube company is here demanding reparation from the line carriers for services by its industrial railway. But, as I see it, this is not a case where an industry, the owner of property transported, seeks an allowance from the trunk lines for services said to have been performed by it with its tracks and locomotives, as was the *General Electric Case*. Neither the tube company nor the Carnegie Steel Company makes claim for services. They claim refund from

carriers engaged in interstate transportation of moneys paid out in switching charges. On argument, counsel for complainants said:

> The shippers are the only ones entitled to claim reparation. They are the only ones who are claiming it in this proceeding; the terminal railroads are defendants. * * * In this present case it does not make a particle of difference whether the Commission says the terminal railroad has to pay it all or the trunk line has to pay it all.

Payment of those charges was necessary in order to get the cars to the point of loading or unloading from the point of interchange with the trunk line carriers. These interchange tracks are called in the majority report "plant interchange tracks." The record does not show that the plant has access to those tracks or any facilities for moving cars to or from those tracks, or that it can load there or unload there. In carload shipments under carload rates the shipper loads and the receiver unloads. The transportation service rendered by carriers under those rates ordinarily is not complete unless the cars are properly placed for loading or unloading.

If the brick yard of the tube company was operated by one owner, its dock yard by another, its pipe mills by another, its rolling mills by another, its rail mill by another, its open hearth steel works by another, its Bessemer steel works by another, and its blast furnace by still another, we should have no difficulty in finding that delivery to any one of these plants was not complete when the car was placed on the tracks where the line haul carriers and the Lake Terminal interchange, by whatever name designated. In what respect does the Lake Terminal differ from any other switching line or belt line in its switching and delivery of interstate traffic?

Apparently the difference is to be found in that these several plants are all operated as one plant by one owner, the tube company; that it, and the Carnegie company, and the Lake Terminal, are all controlled by the United States Steel Corporation, and that, by reason of this community of interest, a placing on the interchange tracks is good delivery to the tube company or the Carnegie company, although it would not be good delivery to any independent concern inside the fence, and is not good delivery to the People's Coal & Supply Company outside the fence. By parity of reasoning consolidation of independent plants in a given locality would deprive them of the delivery to which each had theretofore been entitled, and dissolution of the consolidated company into its component parts would restore each to its right of independent delivery. The mind does not easily come to rest on such a distinction in the duties of common carriage.

This brings us to the crux of the whole question, left undecided by the majority report. Is the Lake Terminal a common carrier? If it is, it has all the rights and duties of a common carrier, regardless of who owns it or operates it, both in respect of proprietary and nonproprietary traffic. That seems to be the holding of the Supreme

Court in the *Tap Line Cases*, 234 U. S., 1. And by application of the tests there approved, it would seem that we must find it to be a common carrier.

(*Tap Line Cases.*)	Lake Terminal.
It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used, does not determine the fact whether it is or is not a common carrier. * * *	The Lake Terminal during the period of 12½ months carried the goods of 33 shippers besides the National Tube Company.
Furthermore, these roads are common carriers when tried by the test of organization for that purpose under competent legislation of the state.	So is the Lake Terminal.
They are so treated by the public authorities of the state, who insist in this case that they are such and submit in oral discussion and printed briefs cogent arguments to justify that conclusion.	The Lake Terminal was held to be a common carrier by the Ohio Public Service Commission.
They are engaged in carrying for hire the goods of those who see fit to employ them.	So is the Lake Terminal.
They are authorized to exercise the right of eminent domain by the state of their incorporation.	This is not dealt with in the record here.
They are treated and dealt with as common carriers by connecting systems of carriers, a circumstance to be noticed in determining their true character.	The Lake Terminal has been treated as a common carrier by the trunk lines both before and since the period during which the absorptions were canceled. In this connection it should be noted that, as stated in the *Industrial Railways Case, supra*, page 238, the Lake Terminal is one of the six roads classified by counsel as a "regular railroad" or a "real railway."

The Lake Terminal makes annual reports to us as a common carrier. According to the last annual report it owns 22 locomotives, 343 freight cars, 1 combination passenger car, 1 "officers' and pay car," and 1 company car. This report shows that it is directly controlled by the United States Steel Corporation through the ownership of "nearly all of the capital stock." On page 402 of the report, in response to the question, "Are the tracks of the respondent operated primarily in the interest of any industrial, manufacturing, or other corporation, firm, or individual?" the answer is, "No—Common Carrier." During the year the average mileage operated was 37.42 miles and the number of freight cars handled 465,809.

Among the rights of the Lake Terminal as a common carrier is that of entering into arrangements with other common carriers for

through routes and joint rates and for compensation in the form of divisions or switching absorptions for its portion of the transportation. The amount of such divisions and absorptions is a matter of public concern because of the common ownership of the Lake Terminal and the principal shipper over its line and may properly be scrutinized by this Commission.

In *Car Spotting Charges*, 34 I. C. C., 609, we held as stated in the headnote:

The line-haul rate covers the customary movement of cars over industry tracks incident to the receipt and delivery of carload freight at convenient points on those tracks for loading or unloading without regard to the size or complexity of the industry, and the points at which the cars are to be placed by the carrier for that purpose without additional charge are to be determined by general usage.

This was elaborated in the report as follows:

The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. * * * As existing rates must be deemed to have been constructed to cover the customary placement of cars at factory doors, whether upon an industry spur or private siding, or upon the tracks of an industrial plant, and the outward movement of cars from such tracks, without regard to the size or nature of the plant, to now add a charge to the line-haul rate for that service would be revolutionary. * * * The mere fact that many individual plants are operated together as a single industry does not deprive the industry of the right to such a service in the receipt and delivery of carload freight at each of the several plants as that plant would be entitled to have if it were operated separately, unless the collective operation so far removes the necessity for the service as to make it unreasonable for the industry to demand the service.

In view of the Supreme Court's opinion in the *Tap Line Cases*, we deemed it necessary to modify our conclusions in the *Industrial Railways Case, supra*, by a supplemental report, 32 I. C. C., 129. Since that time we have considered a series of cases following the *Second Industrial Railways Case*, 34 I. C. C., 596. In these reports we have considered individual roads and have followed the rules for establishing reasonable maximum divisions or switching absorptions laid down in the *Chicago, West Pullman & Southern R. R. Co. case*, 37 I. C. C., 408. The majority report declares unlawful what we have heretofore found lawful. We have recently sanctioned participation by the industrial roads named in the margin * in

* The following railroads under industrial control are permitted to receive divisions out of the line-haul rates of connecting carriers: Campbell's Creek R. R., 33 I. C. C., 558, 44 I. C. C., 353; Chestnut Ridge Ry., 41 I. C. C., 62 and 558; Interstate R. R., 39 I. C. C., 523; Kanawha, Glen Jean & Eastern R. R., 41 I. C. C., 353; Moshassuck Valley R. R., 37 I. C. C., 566; New Jersey, Indiana & Illinois R. R., 41 I. C. C., 42.

The following switching roads under industrial control are permitted to receive switching allowances from their respective trunk line connections: Bedford & Wallner R. R.,[1] 41 I. C. C., 320; Bedford Stone Ry.,[2] 41 I. C. C., 320; Birmingham Southern R. R., 32 I. C. C., 110; Chicago, West Pullman & Southern R. R., 37 I. C. C., 408; Indiana Northern Ry., 37 I. C. C., 491; Johnstown & Stony Creek R. R., 41 I. C. C., 46; Manufacturers Railway, 32 I. C. C., 100; Muncie & Western R. R., 38 I. C. C., 510; Northampton & Bath R. R., 41 I. C. C., 68.

[1] Said to have ceased operation in October, 1917.

[2] Temporarily discontinued and it is said that the tracks are to be taken up.

interstate transportation to and from points on their lines on the line-haul rates, their compensation being derived from divisions of those rates or through the absorption of their switching charges. The majority now undoes what we have thus done. In essence it is a return to the doctrines originally announced in the *Industrial Railways Case*, as summarized in the headnote, and which we abandoned in view of the Supreme Court's opinion.

It can not be overlooked that the majority report undertakes to differentiate between shipments by the complainants and those made by other shippers, and therefore seems to possess the infirmities of the original reports in the *Tap Line Case*, 23 I. C. C., 277, and the *Industrial Railways Case*.

It should not be lost sight of that we have before us for disposition the complaints listed on the title page, and not the *Industrial Railways Case*. At most the record in the latter is before us only "for the purposes of this case." The majority report imports both record and issues in the *Industrial Railways Case* into this case, to the practical exclusion of those in the latter. The complaints are brought to secure reparation for charges in excess of the district rates paid during the period of 12½ months, and this is the issue raised, as recognized by the briefs of complaints prepared and filed in the docket prior to the hearings by the Commission's employees, as is customary, and by the parties, including the trunk lines, at the hearing and on brief.

I am unable to agree with the reasoning advanced for denying reparation to the Carnegie Steel Company. The ore was delivered to the Lake Terminal at the National Dock, over which, according to the report in the *Industrial Railways Case*, page 291, it has an easement, and was hauled to the junction point of the trunk lines.

Attention should be directed to a few other points in the majority report:

1. It is said that during the nonabsorption period the tariffs of the trunk lines expressly provided that "the service commenced and ended at the several plant interchange points hereinbefore described"; and, again, that during that period the tariffs of the defendant line carriers lawfully and properly provided that their rates on the ore of the Carnegie Steel Company "commenced at the tube company's plant interchange tracks." I find no mention of or reference to plant interchange tracks in these tariffs. That of the Baltimore & Ohio, for example, in effect from June 1, 1911, until April 1, 1914, provided:

The rates to and from the points shown below, via the Baltimore & Ohio Railroad, will include the switching charges of connecting railroads shown below, applying within the switching limits at such points, on traffic interchanged with the Baltimore & Ohio Railroad as follows:

The list of stations and railroads which follows includes this item: "Lorain, Ohio. Lake Terminal."

Supplement 23 to that tariff, which was in effect during the period, carried a note against this item reading, " +Erase—Switching charges not absorbed." The symbol + indicated "advance."

It thus appears that, so far as tariff provisions are concerned, they treated the interchange tracks, although not specifically mentioned, as those of a connecting railroad, and not of an industry.

2. The distinction made by the majority report between the Lake Terminal and the other industrial roads affected by the complaints is far from clear. The theory of the majority report is that the line-haul rate shall carry the traffic to or from designated tracks at or immediately adjacent to the plant and that the spotting service between those tracks and interior points within the plant shall not be done by the line-haul carrier without extra compensation and shall not be included in the line-haul rate. If, however, the industrial road connects with the line-haul carrier at a point not adjacent to the plant, the line-haul rates should nevertheless take the traffic to and from the designated tracks at or immediately adjacent to the plant, and if the industrial road performs a service in moving the traffic between such designated tracks and its connection with the line-haul carrier, it is entitled to reasonable compensation out of the line-haul rate, either in the form of an absorbed switching charge or a division of the rate. In neither case will the line-haul rate take the car to the point of loading or unloading, as it has done except during the 12½-month period throughout the district, or to any point designated by the shipper as an acceptable substitute for the point of loading or unloading.

3. The only "allowance" known to the act is that under section 15 to "the owner of property transported." There is no question of allowance in this case. The Lake Terminal is not the owner of the property transported, and the owner of the property renders no service and furnishes no facility in connection with the transportation.

4. There is nothing in *Manufacturers Ry.* v. *U. S.*, 246 U. S., 457, which modifies what the court said in the *Tap Line Cases*, *supra*. The maintenance of a fence around property through which a railroad runs may have a bearing on the good faith of the carrier's offer to carry for the public, but where the road carries for the public a finding can not be sustained that as to one shipper it is a plant facility and in performing a similar service over the same portion or portions of its line for other shippers it is a common carrier. The Manufacturers Railway was held to be a common carrier. The record does not disclose whether or not there is, or was during 1914–15, a fence surrounding the line of the Lake Terminal in such a way as to render its team tracks inaccessible to shippers other than the tube company.

5. Delivery on the storage tracks of the General Electric Company was, of course, delivery to that company, but delivery to the Lake Terminal is not delivery to the National Tube Company. Moreover, the *General Electric Company Case* was decided June 27, 1908, and the attempted analogy loses sight of the amendment of 1910 placing upon the carriers the burden of justifying any rate increased after January 1, 1910. The Supreme Court in the *Tap Line Cases*, 234 U. S., 1, experienced no difficulty in distinguishing the *General Electric Company Case* and the *Solvay Case*, saying:

> These systems of internal trackage were not common carriers, and, however extensive, were intended to and did furnish service for the plants which owned or operated them. But a common carrier performing service as such, regulated and operated under competent authority * * * is no longer a mere appendage of a mill "but a public institution."

6. The majority report disposes of the burden of proof resting upon defendants "by a reference to the findings of the Commission in the *Industrial Railways Case, supra.*" This is directly contrary to the holdings in our two reports in *East Jersey R. R. & T. Co.* v. *C. R. R. Co. of N. J.*, 36 I. C. C., 146, 37 I. C. C., 357. See also *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, 236, 237; *Poteau Coal & Mercantile Co.* v. *A. & S. Ry. Co.*, 40 I. C. C., 459, 460, 461; *Traffic Bureau of Nashville* v. *L. & N. R. R. Co.*, 43 I. C. C., 366, 374; *Fairmont Creamery Co.* v. *A., T. & S. F. Ry. Co.*, 43 I. C. C., 515; *McGowan-Foshee Lumber Co.* v. *F. A. & G. R. R. Co.*, 43 I. C. C., 581; *Oliver Chilled Plow Works* v. *N. Y. C. R. R. Co.*, 45 I. C. C., 356; *Powell River Co.* v. *M. C. R. R. Co.*, 45 I. C. C., 482, 483; and *Campbell & Cleaver* v. *St. L. & S. F. R. R. Co.*, 47 I. C. C., 8.

The details of the manner in which the majority report will affect shipments to and from shippers on the Lake Terminal are not entirely clear. If, as seems to be the case, it is considered that the Lake Terminal is a plant facility of the tube company, but a common carrier as to other shippers, and that delivery by a trunk line to the Lake Terminal is delivery to the tube company but not to the others, complications in the publication of tariffs and the collection of freight charges, demurrage and per diem charges seem inevitable.

Whatever may have been said in 1912, when the record in the *Industrial Railways Case* was made, the undisputed sworn evidence in this case is as set forth in this dissenting memorandum, and affirmatively shows that the claims cover only such transportation service as the trunk lines customarily render elsewhere in the rate district.

The many cancellations by trunk lines of their absorptions of the switching charges of industrial roads, which would be the logical out-

come of the majority report, will result in an immense increase in freight charges paid by shippers with no increase in the service rendered. So revolutionary a change should only be required, if within our power, as the result of a clear showing of necessity upon a clearly drawn issue. We have here no such showing and no such issue. The parties have not been heard upon it. Moreover, under the Supreme Court's decision in the *Tap Line Cases*, our function is to regulate, and not to prohibit, divisions between trunk line and industrial roads. However much we might sympathize with a legislative purpose completely to divorce transportation from industry, no such intent has been evidenced. Our powers are confined to an administration of existing law as interpreted by the courts and do not extend to supplying legislation which Congress has not seen fit to enact.

For the reasons given, I must dissent from the report of the majority.

I am authorized by CHAIRMAN DANIELS to say that he concurs in this dissent.

McCHORD, *Commissioner*, also dissents.

AITCHISON, *Commissioner*, did not participate in the disposition of this case.

No. 9081.

TOLEDO PRODUCE EXCHANGE

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted April 4, 1918. Decided June 27, 1918.

Complaint seeking the establishment of lower ex lake rates and ex rail reshipping rates on grain and grain products from Toledo, Ohio, to points in eastern trunk line territory, on the basis of 78 per cent of the ex lake and ex rail rates from Chicago to New York, and the establishment of joint rates on grain from Missouri River cities to Toledo, found not sustained.

H. G. Wilson for complainant.

N. S. Brown and *Ernest S. Ballard* for central freight association lines; and *Robert Dunlap, T. J. Norton, W. F. Dickinson,* and *F. E. Andrews* for western trunk lines.

C. E. Arthur for Cleveland Milling Company; *M. F. Doyle* for Cleveland Grain Company; *R. R. Hargis* for Indianapolis Board of Trade; *R. D. Sangster* for Board of Trade of Kansas City, Mo.; *C. D. Sturtevant* for Omaha Grain Exchange; *Charles Rippin* for Merchants Exchange of St. Louis, Mo.; and *J. S. Brown* for Board of Trade of the City of Chicago, interveners.

Report of the Commission.

In *Toledo Produce Exchange* v. *A. A. R. R. Co.*, 27 I. C. C., 536, it was alleged on behalf of the grain and milling interests of Toledo, Ohio, that the defendants, by their rates and transit arrangements applying on grain and grain products, unjustly discriminated against Toledo and in favor of Chicago, Peoria, and St. Louis. Toledo was not a rate-breaking point, and grain and grain products reforwarded therefrom to eastern trunk line territory were generally charged the balance of some joint through rate, according to point of origin, subject to various restrictions as to routing, etc.; the local rate was paid on the inbound movement, but the charges were readjusted on the basis of the through rate when the shipment moved out; the Toledo shipper lost the interest on the difference until refund was made; the value of the grain in the Toledo elevator would differ according to the amount of refund that could be had after the outbound movement; the Toledo shipper was not free to move his traffic via any line outbound, irrespective of the inbound line, at the through

rate from the point of origin to destination, but was confined to what remained of the through route provided by the tariff naming the joint rate unless he elected to pay full local rates both in and out; grain from Chicago via the Lake Shore & Michigan Southern Railway, for instance, after transit at Toledo would not be permitted to move out via the Pennsylvania lines, but the Lake Shore would insist upon its legal right to the continued haul; carriers undertook to compel shippers to use only routes where divisions were in effect, and this was a source of considerable difficulty; the cost of switching from the Toledo elevator to the road forming a part of the open route in some cases had to be paid by the shipper; it was not always possible to make the desired delivery at final destination at the remainder of the joint rate, because the tariff naming the joint rate did not provide for its application via Toledo and in connection with the road upon which final delivery was desired; where the tariffs did permit the routing and delivery requirements of the eastern buyer, the Toledo shipper could not meet them unless he had on hand grain that had arrived over a line that formed part of the through route from the point from which the joint rate was published; and full local rates were charged on grain from off the lakes at Toledo. The Toledo shipper was thus hindered, not only in filling orders, but also in soliciting business. Owing to the difficulties mentioned Toledo was at a disadvantage as compared with Chicago, Peoria, and St. Louis. Chicago, Peoria, and St. Louis being rate-breaking points were free to reship via any line on the basis of the through rate from point of origin. There were reshipping rates from Chicago to the east which were considerably less than the local rates and moved most of the traffic. They applied on traffic which had been received from rail lines, as well as on that received from lake vessels. Peoria and St. Louis were given ex rail reshipping rates, which placed them on a parity with Chicago as to the through movement. In the case mentioned the present complainant, with the idea of overcoming some of the difficulties above referred to, asked the establishment of ex rail and ex lake reshipping rates from Toledo on the basis of 78 per cent of the reshipping rates from Chicago to New York on the grounds that the conditions which affected the rates from Toledo were not substantially different from those which led to the establishment of the reshipping rates from Chicago and that class rates and many commodity rates from Toledo were made on the basis of 78 per cent of the Chicago-New York rates. Our conclusion was that ex rail and ex lake reshipping rates from Toledo should be based on seventy-eight sixtieths of the rate applying from Buffalo, N. Y., to New York City, and we suggested a revision of the defendants' transit arrangements at Toledo in order to allow

shippers at that point more freedom in the making of outbound shipments. However, pursuant to a petition filed by several of the carriers further hearing was had on the question of the modification of the Commission's order. After a number of conferences a different set of reshipping rates from Toledo, not entirely satisfactory to any of the parties and higher than provided for in the first report, was tentatively or temporarily agreed upon, and it was put into force August 1, 1914, following an order to that effect from this Commission, 30 I. C. C., 493. These rates are shown in the table below in cents per 100 pounds:

Rates from Toledo, Ohio.	Ex lake.		All rail reshipping, all grain.	Ex lake.		All rail reshipping, all products.	All rail reshipping; all products except flour.
	Oats.	All other grain.		Oats products.	Products, other grain.		
Domestic, to—							
New York, N. Y.	14	13½	12½	14½	14	14	.....
Boston, Mass.	15½	15½	15½	16	16	16	.....
Philadelphia, Pa.	12½	12	11½	13	12½	12	.....
Baltimore, Md.	12	11	10½	12½	11½	11	.....
Export, to—							
New York, N. Y.	12	11½	11½	12½	12	[1] 12	13
Boston, Mass.	12	11½	11½	12½	12	[1] 12	13
Philadelphia, Pa.	11	10½	10½	11½	11	[1] 11	11
Baltimore, Md.	11	10	10	11½	10½	[1] 10	10

[1] Flour only.

For the most part these rates are still in force. The reshipping rates may be used where the balance of the joint through rate does not apply via the desired route. The parties to the case mentioned expressly reserved the right to bring these rates to the Commission's attention later, in the event that actual experience under them should prove unsatisfactory. The same reshipping rates were published from Sandusky, Ohio, and Detroit, Mich., as from Toledo. From Cleveland they were made 1 cent lower than from Toledo. Coupled with the local rates inbound, the reshipping rates result in higher charges than would result from the application of the joint rates.

Upon the expiration of our order the complaint in the instant case was filed. The Toledo interests again ask for ex rail and ex lake reshipping rates on the basis of 78 per cent of the ex rail and ex lake reshipping rates from Chicago to New York. The granting of the prayer would mean a reduction of four-tenths of a cent in the rate on grain from Toledo to New York.

The rates we required in the original case have given only partial relief. Most of the restrictions on the outbound movement from Toledo and the various other disadvantages above mentioned still exist. The congestion of terminals and the shortage of equipment makes the restrictions more burdensome now than in normal times,

for a desired route which under the tariffs is technically open to Toledo shippers at the balance of the joint rate may, as a practical matter, be embargoed or unable to furnish cars. Although the cases in which the restrictions operate to the substantial detriment of the Toledo shippers are comparatively few, they are not so unimportant as to be ignored if any reasonably practical method of removing them can be found. They sometimes may occasion the loss of business and deter purchasers from looking to the Toledo market for their supply. Complainant's members must market their grain where they can ship upon substantially equal terms with their competitors at Chicago, Peoria, and St. Louis.

The complaint also puts in issue the rates on grain from Missouri River cities to Toledo, which are based on the Chicago, Peoria, and St. Louis combinations. The rates to Chicago, Peoria, and St. Louis are proportional rates applying on traffic originating west of the Missouri River. The rates from Chicago, Peoria, and St. Louis are proportional rates applicable on grain originating at points west thereof. The through rates are the same via all three gateways. By an amendment to the complaint the combination through rates on grain from points in Kansas and Nebraska, of which these proportional rates form a part, are likewise assailed. Complainant seeks the establishment of joint through rates from the Missouri River to Toledo which, added to the rates from Toledo to the east, made on the basis of 78 per cent of the Chicago-New York rate, will result in through rates from Missouri River to the east that break on Toledo substantially the same in amounts as those from Missouri River to the east that break on Chicago, Peoria, and St. Louis. With such an adjustment the Toledo dealer could bring grain direct from Missouri River to Toledo and reship it on a practical rate parity with Chicago, Peoria, and St. Louis, and be freed from the various annoyances and disadvantages due to the transit arrangement. The reduction is also sought in order that Toledo may be in better position to ship east by lake in competition with Chicago.

The rate on wheat from Missouri River to Chicago is 12 cents and the reshipping rate from Chicago to New York 16.8 cents, making a through rate of 28.8 cents. Owing to an understanding between the eastern and western roads the combination rates via Peoria and St. Louis are kept on a parity with those via Chicago by adjusting the factors with reference to the factors applied to and from Chicago. The rate to Peoria is 1.5 cents less than to Chicago, and the rate from Peoria is 1.5 cents greater than from Chicago. The rate to St. Louis is 3 cents less than to Chicago and the rate from St. Louis is 3 cents greater than from Chicago. The through combination rates on corn and other coarse grains are 1 cent less than on wheat

because the rates to Chicago, Peoria, and St. Louis on those commodities are 1 cent less than on wheat. While Chicago, Peoria, or St. Louis can bring in wheat from Missouri River and ship it out to New York at a through charge of 28.8 cents per 100 pounds, Toledo, where it encounters the restrictions as to routing, etc., and desires to overcome them, must pay 31.8 cents for substantially the same service, its rate on wheat being 18.3 cents, inbound, made up to 12 cents to Chicago and a proportional of 6.3 cents from Chicago to Toledo and 13.5 cents from Toledo to New York.

The rate from Peoria to Toledo is 1.5 cents higher and that from St. Louis to Toledo 3 cents higher than from Chicago, because the rates to those gateways are 1.5 cents and 3 cents, respectively, lower than to Chicago. If Toledo has a reshipping rate to New York of 13.1 cents, as asked, i. e., 78 per cent of the Chicago-New York reshipping rate, it would need an inbound rate from Missouri River of 15.7 cents to put it on an equality with Chicago, Peoria, and St. Louis. The complainant contends that it is unreasonable and an unjust discrimination against Toledo to charge it 18.3 cents on wheat from Missouri River, while Chicago pays but 12 cents. Speaking generally, the distance from the Missouri River to the Mississippi River is a little over 300 miles. To Chicago it is nearly 500 miles. To Toledo it is about 700 miles. The rate on wheat from the Missouri River to the Mississippi River is 9 cents. For the extra distance to Chicago of less than 200 miles it is 12 cents, or only 3 cents higher, while from Missouri River to Toledo for the additional distance of a little over 200 miles it is 18.3 cents, or 6.3 cents higher than to Chicago. Except for the differences in distance the transportation conditions are perhaps substantially the same to all these points. A one-line haul is involved from Missouri River to Chicago, Peoria, and St. Louis, but to Toledo a two-line haul is required except in the case of the Wabash Railway.

The relief asked respecting the rate to Toledo is opposed by the Board of Trade of the City of Chicago and the Merchants Exchange of St. Louis, interveners, because if a joint through rate, less in amount than the combinations on those points, were established from Missouri River to Toledo, Missouri River grain would move over their heads to Toledo at a lower transportation charge than would apply if the grain were shipped into and out of those gateways. The disadvantage which the gateways would experience could be minimized by the establishment for them of transit arrangements in connection with the joint rates, but that would probably transfer to them some of Toledo's transit difficulties and be less satisfactory than the present arrangement whereby they are free to ship in or out via any route. As most of the rates break at Chicago, Peoria, or St. Louis, there are

now practically no transit arrangements in force at those points. The shippers at the gateways and the carriers alike have lent their efforts in recent years toward doing away with joint rates via those points. Transit on the joint rates disturbed the market and kept the door open for discriminations. The Board of Trade of Kansas City, Mo., and the Omaha Grain Exchange also intervened in opposition to the complaint, particularly in as far as it concerns the prayer for joint rates from Missouri River to Toledo. These two interveners do not put themselves in the position of objecting to a reduction in the rate to Toledo, but oppose the establishment of a joint rate to that point or special proportional rates to and from Chicago, Peoria, and St. Louis for the benefit of Toledo, because of the effect it will have on their customers at those gateways, which may operate to the disadvantage of Kansas City. The Indianapolis Board of Trade opposed the complaint generally. The Cleveland Milling Company and the Cleveland Grain Company, of Cleveland, Ohio, which operate under relatively the same rate situation as the Toledo shippers, intervened in support of the complaint.

As in the previous case the complainant contends that the falling off in business at Toledo is due to the rate adjustment, and that if the rates sought are granted the situation will be much improved. Toledo now can draw grain by lake direct from Duluth at about the same transportation charge as Chicago, and has a considerably lower ex lake rate to the east than Chicago. A reduced ex lake rate will give Toledo a still greater advantage in this respect. Outbound, Chicago ships large quantities by lake, but Toledo none. The lake transportation charges from Toledo to Buffalo, N. Y., and Montreal, Canada, are somewhat less than from Chicago, but Toledo must pay 6.3 cents more than Chicago for Missouri River grain which comes in by rail. A reduction of this difference would enable Toledo to ship out more grain by lake, and with an increased movement from Toledo by lake competitive conditions as between the lake lines and the rail lines at Toledo would be more nearly the same at Toledo as at Chicago, and would tend to support Toledo's claim for rates made with a definite percentage relation to the rates from Chicago.

The circumstances and conditions which brought about the reshipping rates from Chicago and fixed their level are well understood. They have been put before the Commission in other cases, and need not be detailed here. They did not all exist at Toledo, nor in the same degree as at Chicago. In *Buffalo Grain Cases*, 46 I. C. C., 570, we were asked to prescribe ex rail and ex lake reshipping rates from Buffalo, N. Y., to eastern trunk line territory on the basis of 53 per cent of the Chicago-New York rate, this percentage being substantially the relation between the Buffalo-New York class rates and

the Chicago-New York class rates. The carriers were directed to submit to us for examination and approval a schedule of reshipping rates and transit arrangements on grain and grain products from Buffalo to eastern points in general harmony with those enjoyed at Chicago, but the specific prayer of the complainants in those cases was not granted. We stated that we were not prepared to accept the theory of making the rates on grain from Buffalo at a fixed percentage of the rate from Chicago.

One of the objections defendants have to the granting of the proposals made by the complainant in this case is of course the probable disruption and possible disintegration of the grain rate fabric. Detroit, Mich., Cleveland, Sandusky, Bellefontaine, Bellevue, Mansfield, and Cincinnati, Ohio, Indianapolis and Terre Haute, Ind., and other points might all expect similar treatment. A reduction in the rate from Kansas City to Toledo and intermediate points would no doubt bring demands for reductions from Chicago, Peoria, and St. Louis to points in central freight association territory. The Board of Trade of the City of Chicago announced at the hearing that it would take such action if the Missouri River-Toledo rate was reduced. Toledo's rate situation is not less favorable than those of other cities east of Chicago. It is impractical to arrange so that rates will make and break at various widely separated points and be the same in the aggregate; and that is substantially what this case involves.

The allegations of the complaint are not sustained, and an order of dismissal should accordingly be entered.

MEYER, *Commissioner:*

With unimportant modifications the foregoing is the report proposed by the examiner and served upon the parties to the proceeding. The report and conclusions proposed by the examiner are approved and adopted as the report and conclusions of the Commission.

No. 8710.

NORTHWESTERN TERRA COTTA COMPANY ET AL.

v.

ADIRONDACK & ST. LAWRENCE RAILROAD COMPANY ET AL.

Submitted February 9, 1917. Decided June 14, 1918.

1. Official classification rating of fifth class on shipments of terra cotta for building purposes, in carloads, found not to be unreasonable.
2. Rates based on official classification rating of second class for shipments of terra cotta for building purposes, loose, of 10,000 pounds or more from points in the states of Illinois, Indiana, Missouri, and Colorado to points in central freight association and trunk line territories found to be unduly prejudicial as compared with rates based on official classification rating of fourth class on similar shipments from points in the states of New York, Pennsylvania, New Jersey, Delaware, and Maryland to destinations in central freight association and trunk line territories.
3. Reparation denied.

W. M. Webb and *Jeffery & Campbell* for complainants.

E. S. Ballard, *R. N. Collyer*, and *J. B. McCorkle* for defendants.

Report of the Commission.

Division 3, Commissioners Harlan, Hall, and Anderson.

Harlan, *Commissioner:*

Terra cotta, for building purposes, when shipped in carloads of 30,000 pounds or over, is rated fifth class under the official classification; in less than carloads, when loose, second-class rates apply; and when in crates or barrels the fourth-class rates. And these classifications, with the rates based thereon, were and are applied to the shipments made from the plants of the complainants located at Chicago, St. Louis, Indianapolis, Kansas City, Denver, and Terra Cotta, the latter point being in the state of Illinois, to points in central freight association and trunk line territories. At the time this proceeding was heard, however, many of the defendant carriers were handling the traffic from shipping points on their lines in the states of New York, New Jersey, Delaware, Maryland, and Pennsylvania to points in central freight association and trunk line territories under exceptions to the official classification, the ratings assessed being as follows:

Terra cotta for building purposes, loose, less than carloads, in lots of 10,000 pounds, or over—fourth class.

Terra cotta, building, not ornamental, loose, in carloads, minimum weight as per rule 5 (e), agent R. N. Collyer's official classification as referred to—sixth class.

While the eastbound rates—i. e., those paid by the complainants—were based on the official classification ratings of fifth class in carloads and second class in less than carloads, the westbound rates were in effect commodity rates equal to sixth class in carloads and fourth class in less than carloads in lots of 10,000 pounds or more. In the complaint it was alleged that the ratings charged eastbound on the shipments of the complainants were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the westbound ratings named. Since the hearing the carload ratings and minimum weights have been made the same eastbound as westbound, thus removing one of the causes of complaint.

Two issues, however, remain to be considered:

(1) Is it unduly prejudicial to apply rates eastbound based upon second class to shipments of terra cotta, loose, in less-than-carload quantities of 10,000 pounds or more, while applying lower rates based upon fourth class to such shipments westbound?

(2) Is the fifth-class rating and carload minimum weight of 36,000 pounds now applied to shipments of terra cotta, in carloads, unreasonable?

It was shown that the terra cotta manufactured in the east has the same shipping characteristics as that made in the west; that it is used for the same purposes and seeks in part the same markets. And no reason has been shown upon this record why a different classification rating should apply on this commodity when moving in one direction than in the other.

The second issue is more important. The complainant urges that while, as a practical matter, the principal use of terra cotta is as a building material, its present classification is based upon the erroneous theory that its main use is for purposes of ornamentation; that the eastern carriers by voluntarily establishing the sixth-class rating on this material, in carloads, and continuing rates based thereon through several years, have recognized the necessity and propriety of rates on terra cotta more nearly comparable with rates on other building materials, such as cement blocks, pressed brick, enameled brick, artificial and natural stone, and marble, to which it is to a certain extent analogous and with which it comes into keen competition; that the manufacture of terra cotta necessitates the shipment inbound to the complainants' plants of a large amount of raw material from the handling of which the defendants derive a revenue. The record shows that terra cotta is a clay product, made in molds from plans and consists of pieces, sometimes with plain and some-

times with ornamental fronts and hollowed backs, with partitions for the purpose of adding strength; it is in demand for the exteriors of buildings, such as store fronts, theater fronts, apartment buildings, and public buildings, where lightness, cleanness, and ornamentation are desired, and for this purpose competes with cement products, artificial stone, natural stone, enameled brick, and pressed brick. For interior use it competes with marble, natural granite, and enameled brick. Terra cotta is of higher value, per ton and per square foot of surface, than enameled brick or vitrified brick, and where considerable ornamentation is desired it has a natural advantage over stone. In bidding on a piece of work in which the choice is to be made between terra cotta and stone or other material the competition is said of record to be so keen that a difference of but $25 to $50 on a $5,000 contract is often sufficient to determine which material shall be used.

An exhibit filed by one of the complainants, the Northwestern Terra Cotta Company, shows that, during the year 1914, it received inbound 759 cars of coal, 353 cars of clay, 103 cars of grog, 45 cars of packing hay, 75 cars of plaster, 74 cars of fire-brick and fire-clay goods, 11 cars of limestone, and 7 cars of other materials, making 1,427 cars in all, on which freight charges aggregating $57,067.87 were paid. It was testified that about 5 per cent of the weight of a carload shipment of terra cotta consists of packing and bracing. Of the shipments from one plant, 2.9 per cent of the freight charges on carload shipments were paid back to the shipper in damage claims during one period shown, and during another period the damage claims filed amounted to 3.6 per cent of the freight charges and the claims paid to slightly less than 1 per cent.

An examination shows that since 1887, or for more than 30 years, terra cotta has been recognized in official classification as a building material. The following table shows the rating and carload minimum on clay products of different kinds, terra cotta for building purposes, and on other building materials, some of which are competitive with terra cotta:

	Rating.	Carload minimum.
		Pounds.
Terra cotta, for building purposes	5	36,000
Building stone, artificial stone, granite, marble:		
Not polished	6	30,000
Polished	5	30,000
Glazed brick, tile (marble, granite, etc.)	5	30,000
Cement, concrete, or plaster building blocks; slate, rough dressed blocks; tile, hollow building or roofing	6	36,000
Slate, other than rough dressed; tile, flooring or paving quantities	5	36,000
Tile, comparative facing or flooring	4	30,000
Slate, curbing lintels, etc	6	40,000
Garden pottery; granite, marble, and stone pedestals	4	40,000
Granite, marble, and stone fountains (artificial or natural); bathtubs; granite, marble, and stone ware	4	30,000
[illegible]	4	24,000
[illegible]arthenware	5	24,000

In an exhibit filed by the complainants there is shown the number of tons of terra cotta shipped into each state from factories located in what are called the central and eastern divisions. The central division includes factories at Chicago, Denver, Indianapolis, Kansas City, and St. Louis; the eastern division includes factories at Atlanta, New York, Corning, Long Island City, Philadelphia, and Niceton, the latter point being in the state of Pennsylvania. From this exhibit it appears that the product of plants in the central division is marketed largely in the states of Indiana, Illinois, Iowa, Missouri, and Wisconsin; the eastern plants dispose of their output largely in the states of New York and Pennsylvania, while users of terra cotta in the states of Ohio and Michigan draw their supply in about equal quantities from both divisions.

Upon the whole record, we are of the opinion that the fifth-class rating on terra cotta for building purposes is not unreasonable. The demand for reparation, being based solely upon that contention, must therefore be denied. There is no evidence to show that difficulty is experienced in loading to the required carload minimum weight, exhibits filed by the complainants showing that cars were usually loaded far above the required minimum weight. We regard it, however, as unduly prejudicial for these defendants to apply second-class rates on shipments of terra cotta, loose, in lots of 10,000 pounds or more when made by complainants from their shipping points while applying rates based on fourth class to similar shipments from eastern points of production. An order will be entered in conformity with the above views.

No. 9736.

MONTGOMERY WARD & COMPANY
v.
PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted November 12, 1917. Decided June 14, 1918.

Rate on new furniture, n. o. s., in carloads, from Shelbyville, Ind., to Kansas City, Mo., found to have been unreasonable. Reparation awarded.

M. C. Penticoff for complainant.

A. G. Linneman for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the mail order business at Kansas City, Mo. By complaint filed June 7, 1917, it alleges that the rates charged by defendants on 56 carloads of new furniture, shipped from Shelbyville, Ind., to Kansas City, between October 24, 1911, and August 11, 1913, inclusive, were unreasonable and unjustly discriminatory. It asks reparation. The claim was presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

The shipments moved from Shelbyville over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Panhandle, 54 routed by way of Peoria, Ill., and two by way of East St. Louis, Ill., and the lines of the other defendants beyond. Charges were collected on the shipments through Peoria at rates of 24½ cents, minimum 12,000 pounds, subject to rule 27, or 21 cents, minimum 20,000 pounds, from Shelbyville to Peoria and 26¼ cents beyond. It appears that the charges on the two shipments through East St. Louis were also collected on basis of the Peoria combination. A combination rate of 56 cents, composed of 33½ cents to East St. Louis and 22½ cents beyond, was legally applicable, so that these shipments were undercharged.

At the time of movement the Panhandle, the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, and other carriers maintained rates of 25½ cents, minimum 12,000 pounds, and 22 cents, minimum 20,000 pounds, subject to rule 27, from Cincinnati, Ohio; Madison, Ind.; Louisville, Ky., and numerous adjacent

points in Ohio, Kentucky, and Indiana, to East St. Louis and upper Mississippi River crossings, applicable to new furniture, n. o. s., when destined to points in Missouri and other states west of the Mississippi River. The component contemporaneously in effect beyond was 22½ cents, so that the combinations based on the Mississippi River were 2¾ cents less than the Peoria combinations. The 25½-cent component from Cincinnati to the Mississippi River was equivalent to third class and the 22-cent component to 126 per cent of fourth class under exceptions to the official classification which list a number of special items under the caption "furniture, new, n. o. s." Effective August 30, 1913, the Panhandle published the same rates on this traffic from Shelbyville to East St. Louis as applied from Cincinnati and points taking the same rates. On July 22, 1916, the same rates as were in effect from Cincinnati were established from Shelbyville to the upper Mississippi crossings by way of Peoria. Defendants stated that it was due to oversight that the reduced rates from Shelbyville to upper Mississippi River crossings were not made also applicable by way of Peoria and the upper crossings, and admitted that the rates assailed were unreasonable to the extent that they exceeded those subsequently established.

We find that the rates assailed were unreasonable to the extent that they exceeded the combinations of rates based on the Mississippi River crossings contemporaneously in effect from Cincinnati and related points. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of $11.66, with interest, from the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; the Minneapolis & St. Louis Railroad Company and the Atchison, Topeka & Santa Fe Railway Company; in the sum of $304.42, with interest, from the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and the Chicago, Rock Island & Pacific Railway Company and its receiver; in the sum of $5.56, with interest, from the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Chicago, Peoria & St. Louis Railway Company and its receivers; and Missouri, Kansas & Texas Railway Company, and its receiver; and in the sum of $5.67, with interest, from the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Chicago, Peoria & St. Louis Railway Company, and its receivers; and St. Louis & San Francisco Railway Company. Collection of the undercharges mentioned may be waived.

An order for reparation will be entered but as the rates from Shelbyville to these destinations have been the same as from Cincinnati for over a year no order for the future is necessary.

No. 9093.

NORTHERN POTATO TRAFFIC ASSOCIATION
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Submitted May 15, 1917. Decided June 27, 1918.

Commodity rate of 70 cents per 100 pounds on potatoes in carloads from Minnesota and Wisconsin producing points to the Dallas-Fort Worth group in Texas found to have been unreasonable to the extent that it exceeded 65 cents. Reparation awarded. The same rate from the same originating territory to the rest of Texas common point territory not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial.

O. W. Tong for complainants.

John F. Finerty, *C. S. Burg*, *Henry G. Herbel*, *Thomas Bond*, *Daniel Upthegrove*, *J. M. Souby*, *Arthur Miller*, *George Thompson*, *H. S. Garrett*, *Hawkins & Franklin*, *Baker*, *Botts*, *Parker & Garwood*, *Robert Dunlap*, *T. J. Norton*, *F. E. Andrews*, *Geo. P. Lyman*, and *G. H. Baker* for defendants.

Carle Whitehead and *Albert L. Vogl* for Greeley Commercial Club and other Colorado interveners; *Seth Mann* for California Wholesale Potato Dealers' Association; and *John W. Graham* for Public Utilities Commission of the state of Idaho, interveners.

Report of the Commission.

Hall, *Commissioner:*

Complainant is a voluntary association of shippers and dealers in potatoes. By complaint filed August 15, 1916, it attacks as unreasonable, unjustly discriminatory, and unduly prejudicial defendants' rate of 70 cents per 100 pounds on potatoes in carloads from certain points in Minnesota and Wisconsin, hereinafter called the Minnesota points, to Dallas, Tex., and other points in so-called Texas common point territory designated in southwestern lines tariff then in effect, or in subsequent issues. It asks reparation on behalf of members named in the complaint. The allegations of unjust discrimination and undue prejudice are based on the existence of lower rates, distance considered, on potatoes from points in Idaho, Colorado, and California, and are directed particularly against the delivering carriers.

The Minnesota points are on the lines of the Great Northern and Northern Pacific railways and lie to the north of Minneapolis, Minn., at an average distance of 65 miles. The defendants are the carriers

participating in the transportation therefrom to Texas common points and, with the exception of the Atchison, Topeka & Santa Fe Railway Company, do not include the originating lines serving Idaho, Colorado, and California.

Shippers of potatoes from these three states intervened, as did also D. E. Ryan, trading at Minneapolis as D. E. Ryan Company, and seeking reparation. Rates are stated in cents per 100 pounds and do not take into consideration changes made on June 25, 1918, under General Order No. 28, as amended, of the Director General of Railroads.

Much evidence was adduced as to the conditions under which potatoes are shipped from the various states to Texas. Rated class C in western classification, they in many instances take lower commodity rates. The rate under attack is the same as from Minneapolis and is a joint rate based upon the class C differential, Minneapolis over St. Louis, Mo., of 12 cents, plus the commodity rate on potatoes in carloads from St. Louis, which was formerly 58 cents to all destinations covered by the complaint. In *Dallas Chamber of Commerce* v. *A., T. & S. F. Ry. Co.*, 40 I. C. C., 619, we recognized the geographic position of points in the northeastern portion of Texas, of which Dallas and Fort Worth are representative, hereinafter termed the Dallas-Fort Worth group, and, among other things, required the establishment of a carload rate on potatoes from St. Louis to that group at least 5 cents less than the then existing rates. Under our order there the rate from St. Louis to the Dallas-Fort Worth group became 53 cents, effective October 15, 1916. A corresponding change in the through rate from the Minnesota points would have reduced it to 65 cents.

The following table sufficiently illustrates the rate adjustment:

From—	To Dallas.		To Waco, Tex.		Carload minimum weight.
	Distance.	Rate.	Distance.	Rate.	
	Miles.	*Cents.*	*Miles.*	*Cents.*	*Pounds.*
Princeton, Minn.	1,071	70	1,171	70	[1] 24,000 [2] 30,000
St. Louis, Mo.	688	53	788	58	[1] 24,000 [2] 30,000
Greeley, Colo.	887	54	944	58	[1] 24,000 [2] 30,000
Idaho Falls, Idaho	1,530	64	1,587	68	[1] 24,000 [2] 30,000
Stockton, Cal.	1,798	75	1,860	75	30,000

[1] Applies from June 1 to Sept. 30. [2] Applies from Oct. 1 to May 31.

The rate on potatoes from Texas common points to destinations in Minnesota is 57 cents, subject to a carload minimum of 24,000 pounds. It is said that some of this northbound movement is in stock cars.

Potatoes for table use are seldom shipped from Minnesota to Texas except in times of crop failure in other states. Shipments from Minnesota to Texas are as a rule made early in the year, and consist of seed potatoes.

It is unnecessary in this proceeding to review the evidence concerning the equipment used, dunnage allowed, transportation of stoves and attendants, and other matters. They have frequently been before us.

Upon consideration of the record we are of opinion and find that the rate assailed was unjust and unreasonable for the transportation of potatoes in carloads from the Minnesota points to the Dallas-Fort Worth group to the extent that it exceeded 65 cents, which we find would have been reasonable. We are further of opinion, and find, that complainant's members named in the complaint, and D. E. Ryan, intervener, have been damaged and should be awarded reparation to the extent that the rate paid and borne by them exceeded 65 cents per 100 pounds on shipments of potatoes in carloads moving on and after August 15, 1916, from the Minnesota points to said destinations. Statements should be prepared showing the details of said shipments in accordance with rule V of the Rules of Practice and the date or dates on which the freight charges were paid, which statements should be submitted to defendants for verification. Upon receipt of the statements so prepared and verified we will consider the entry of orders awarding reparation.

The rate of 70 cents is not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial for movements to the other destinations in Texas named.

Evidence was introduced to the effect that in many instances the aggregates of the rates to and from intermediate points in Oklahoma or Louisiana were lower than the joint rate. These departures from the rule of the fourth section are similar to those considered in *Through Rates to Points in Louisiana & Texas*, 38 I. C. C., 153. They should be eliminated at once where this has not already been done.

By General Order No. 28, May 25, 1918, as amended, the Director General of Railroads, in the exercise of powers conferred upon the President by the federal control act approved March 21, 1918, has initiated and directed the establishment on June 25, 1918, of rates exceeding those theretofore in effect, thereby fixing both the amount and the relation of the rates to be applied for the future on the traffic here under consideration. The rates so increased are not subject to review by us upon the present pleadings.

No. 8693.

N. A. WILLIAMS COMPANY

v.

PENNSYLVANIA COMPANY ET AL.

FOURTH SECTION APPLICATION No. 2060.

Submitted September 25, 1916. Decided June 28, 1918.

1. Rates charged on sewer pipe in carloads from Ohio points to certain destinations in Wisconsin and Michigan found not to have been in violation of section 4 of the act but unjust and unreasonable in so far as they exceeded the aggregate of proportional rates to the Lake Michigan west-bank crossings, so limited as not to apply on traffic to the destinations involved, plus the local or proportional rates beyond.
2. Reparation awarded.

C. E. McLean for complainant.

Ernest S. Ballard for Lake Erie & Western Railroad Company and New York Central Railroad Company; *C. D. Clark* and *A. J. Anderson* for Baltimore & Ohio Railroad Company; *G. J. Vizard* for Erie Railroad Company; and *S. C. Matthews* for Pennsylvania Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is engaged in buying and selling sewer pipe, flue lining, wall coping, fire brick, and other clay products, with its principal office in Chicago, Ill. The complaint alleges that the rates charged on 109 carloads of sewer pipe from Akron, Barberton, Midvale, and Parral, Ohio, to various destinations in Wisconsin and Michigan, which moved between March, 1914, and October, 1914, were unreasonable, unjustly discriminatory, and in excess of the aggregate of the intermediate rates subject to the act, and asks reparation. There was set for hearing in connection with the complaint Fourth Section Application No. 2060 of J. F. Tucker, agent, seeking, among other things, authority to continue charging a greater compensation on sewer pipe, carloads, from the said points of origin to destinations in Wisconsin and Michigan as a through route than the aggregate of intermediate rates subject to the act.

Most of the shipments in question moved by the cross-lake routes through Milwaukee, Manitowoc, Kewaunee, Marinette, Wis., and Menominee, Mich., others by way of Chicago. The charges, except

in a few instances, where admittedly the proper rate was not applied, were collected on the basis of joint commodity rates published in agent Morris's tariff I. C. C. 410. These rates were equivalent to the lowest combination then in effect on Chicago or one of the west-bank crossings of the sixth-class locals to the junction and the class E local or proportional rate, western classification, beyond. The sixth-class local rate to Chicago from all points of origin, except Midvale, was at that time 12 cents, and to west-bank crossings 14 cents, which rates have subsequently been increased to 15 and 17 cents, respectively. To Chicago from Midvale the sixth-class local rate was 13 cents and to west-bank crossings 15 cents, subsequently increased to 16 and 18 cents, respectively. At the time of the movements from all points of origin, except Midvale, to west-bank crossings, agent Morris's tariff I. C. C. 368, carried a sixth-class *proportional* rate applicable on sewer pipe of 12 cents, and from Midvale of 13 cents, which rates are now 15 cents and 16 cents, respectively. The application of these proportional rates, however, was and is limited as follows:

> Rates * * * will apply across Lake Michigan as proportional rates to Milwaukee, Manitowoc, Kewaunee, Marinette, Wis., and Menominee and Manistique, Mich., located on the A. A. R. R., G. T. Ry., and P. M. R. R., on traffic destined to points west thereof, to which no through rates are published herein, or in I. C. C. No. 291 * * * (issued by Eugene Morris, agent), supplements thereto or subsequent issues thereof.
>
> Proportional rates to Milwaukee, Kewaunee, Marinette, Wis., Menominee, and Manistique, Mich., will not apply to points taking same rates.

This tariff did not name through rates to any of the destinations involved. However, agent Morris's tariff I. C. C. 291 carried joint class rates from points of origin to practically all points in Wisconsin and Michigan to which the shipments moved. The joint sixth-class rates on sewer pipe in this tariff were higher than the joint commodity rates in agent Morris's tariff 410, which were in turn higher than the proportional rates to the west bank Lake Michigan crossings plus the interstate locals beyond. The complainant alleges that by not permitting the proportional rates to be used in constructing through rates via the west-bank crossings the initial carriers whose lines reach Chicago attempted to hold this traffic to the Chicago gateway. At present the joint commodity rates in effect are made by combination with the local or proportional rates in effect beyond the gateways of a factor up to the gateway which is the same to Chicago as to the west-bank crossings and which is lower than either the local or the proportional rates to those crossings.

The defendants maintain that the limitation on the proportional rates was published in the manner described for the sake of economy in publication; that formerly they published so-called "equalizing"

rates which applied whenever the rates beyond the gateways were such as to render equalizing necessary; that, for instance, if the rates from Chicago to points in Wisconsin were 10 cents and the rates to Chicago from a point in central freight association territory were 12 cents, the Chicago combination would be 22 cents; that to equalize this combination through Menominee a proportional rate to Menominee would be published applicable on traffic destined to points west of Menominee to which the rates from Menominee were the same as or higher than the rate from Chicago; that this method of publishing rates is now forbidden by the Commission; that the reason of the proportionals here involved is to equalize the total charge through different gateways and make as many routes as possible available; and that this limitation is plain and unambiguous and prevents them being considered as "intermediate rates" to the destinations involved in the sense in which the words are used in the fourth section of the act.

This complaint presents the following questions: (1) Are the proportional rates involved so definitely limited that they are not "intermediate rates" under the fourth section of the act? (2) Were the through rates in effect at the time these shipments moved unreasonable, in contravention of section 1 of the act?

In *Lindsay Brothers* v. *B. & O. S. W. R. R. Co.*, 16 I. C. C., 6, a joint through class rate of 29 cents was charged on vehicles from Lawrenceburg, Ind., to Milwaukee, Wis. There was at the same time a local class rate of 17 cents from Lawrenceburg to Chicago, and a local class rate from Chicago to Milwaukee of 8½ cents; also a class rate of 5 cents from Chicago to Milwaukee applicable only on shipments originating east of the Indiana-Illinois state line. We held the 29-cent rate unreasonable, and found that a reasonable joint rate should not exceed 25½ cents. With reference to the 5-cent rate, we said:

> It is to be noted, however, that the latter rate was applicable only on shipments of vehicles originating east of the Illinois-Indiana state line, and was therefore not a local rate but a proportional rate.

On page 9 we said:

> We must insist upon the principle that in the absence of a justifying explanation a through rate in excess of the sum of the locals is an unreasonable rate.

This was decided in 1909.

Windsor Turned Goods Co. v. *C. & O. Ry. Co.*, 18 I. C. C., 162, was decided prior to the amendment of 1910 to the fourth section of the act. Here it appeared that joint through rates from certain points in West Virginia and Kentucky to Windsor, Ontario, were in excess of the joint rates from the same points to Detroit, plus the

arbitrary of 2 cents, and in some instances plus the local of 2½ cents, from Detroit to Windsor. On page 164 we said, after referring to *Lindsay Brothers* v. *B. & O. S. W. R. R. Co.*, *supra:*

> It has since become necessary in order to do more complete justice to extend the application of the rule so that, except in special and unusual circumstances, and respecting fully the limitations placed in these tariffs upon the use of basing, proportional or arbitrary rates, the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same routes is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled.

These cases were decided prior to the amendment of section 4 of the act, which makes it unlawful—

> to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of the act.

Although with the amended fourth section it has not been necessary to invoke the rule announced in the *Windsor Turned Goods Case*, *supra*, as frequently as before the amendment, the rule is as sound in ascertaining the reasonableness of rates as when it was announced and has been so recognized in cases decided subsequently to the amendment.

In *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, it appeared that certain joint rates from defined territories to destinations in Louisiana and Texas were higher than rates to intermediate points in those states plus the local rates from such points to ultimate destinations in the same state. While the latter rates were not specifically restricted to intrastate traffic it was the carrier's intention that they would be applicable on interstate traffic only where no specific joint rates were in effect. The Commission in deciding that these rates were intermediate rates within the meaning of the fourth section said, at page 164:

> These rates now apply on through traffic to destinations in Louisiana and Texas where specific through rates are not published and would be applicable on traffic from the defined territories were the present through rates canceled. They apply for a portion of the haul which is included within the through haul from points outside the states of Louisiana and Texas to points within those states. Their function is essentially, therefore, that of intermediate rates and they clearly fall within the meaning of that term as used in the amended fourth section. In *Windsor Turned Goods Co.* v. *C. & O. Ry. Co.*, 18 I. C. C., 162, we announced the principle that the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route will be held to be the lowest combination that would lawfully apply if the joint through rate were canceled, and to this view we adhere.

To the same effect was the Commission's decision in *Lafayette Chamber of Commerce* v. *L. W. R. R. Co.*, 41 I. C. C., 297, and *Blackwell Lumber Co.* v. *M. P. Ry. Co.*, 42 I. C. C., 756, 761. The

state rates, which were one of the intermediate factors in those cases, were specifically limited so that they would apply on interstate traffic only in the absence of through rates.

In *Joseph Iron Co.* v. *M. L. & T. R. R. & S. S. Co.*, 37 I. C. C., 591, and 40 I. C. C., 525, dated November 2, 1915, and June 29, 1916, respectively, it appears that there was a proportional rate from Houston, Tex., to New Orleans applicable only on traffic "destined to points beyond, to which no through rates are published." This attempted limitation on the proportional rates from Houston was held insufficient to bar its application in constructing a through rate to Chicago, although there was a joint through rate on scrap iron from New Orleans to Chicago. The tariff item carrying the proportional rate was objectionable because it practically compelled the shipper to look through every tariff on file with the Commission before he could be certain whether the proportional rate would or would not apply.

In the second report in *Joseph Iron Co.* v. *M. L. & T. R. R. & S. S. Co.*, 40 I. C. C., 525, we said with respect to the rule in the *Windsor Turned Goods Case, supra:*

> That rule is affirmed and it applies in the instant case. We adhere to our previous decision, and will accordingly reenter the order for reparation

and with respect to the manner of restricting the proportional rates there under consideration:

> The petition for rehearing was filed because certain carriers construed our decision as a ruling that all restricted proportional rates were to be considered in determining whether or not the through rate exceeds the aggregate of the intermediate rates. It is to be understood that we are dealing only with the facts in this case, including the fact that the proportional rate in question was not so properly restricted or limited as to make its application definite, clear, or ascertainable, and what we have here held is not to be construed as applicable in cases where the use of proportional rates is properly defined.

In the case now at issue the application of the proportional rates from points of origin to Lake Michigan west-bank crossings was limited to traffic to those points "to which no through rates are published herein, or in I. C. C. No. 291." This definitely shows where the joint rates, whose existence precludes the use of the proportional rates, are to be sought; and does not merely make a general statement that if a joint rate exists in some tariff or tariffs not indicated, the proportional will not apply. In Morris's agency tariff I. C. C. 291 appear through rates to the points of destination involved, thereby precluding the application of the proportional. Since the proportional rates referred to the tariff carrying the joint class rates, we can not say that the proportional rates are intermediate rates which would become effective in the absence of the joint through class rates.

Although it is obvious that the method employed by the defendants is not the most precise or desirable way of indicating a limitation on the application of a rate, we can not agree that the limitation is without lawful effect.

We are of opinion and find that the proportional rates from the points of origin involved to the Lake Michigan west-bank crossings are not intermediate rates to the destinations in question, within the meaning of the amended fourth section of the act, and consequently that no violation of section 4 by the defendants has been shown in this case.

Although the proportionals to the west-bank crossings can not be regarded as intermediate rates within the meaning of the fourth section, the fact that the aggregates of these proportionals plus the rates beyond make less than the joint rates raises a presumption that the joint rates were unreasonable which, in the absence of evidence indicating the contrary, must be accepted as conclusive of their unreasonableness. These proportionals apply for identically the same service up to Milwaukee, and the locals or proportionals beyond apply for as great or greater service beyond Milwaukee than that which is performed on a through movement under the joint rates. The record contains a list of 63 points in Wisconsin and Michigan to which no joint rates were published. At the time of the movements in question sewer pipe or any other article rated sixth class in official classification shipped to any of these points would take the proportional rate up to the west-bank crossings. On traffic to many of these points lower rates would have applied up to the crossings than on like traffic carried through these points to more distant points to which joint rates were published. The proportional rates were also available on traffic to points west of the Mississippi River to which no through class rates were published.

The carriers had full opportunity to prove the necessity for charging less for the haul up to Milwaukee on traffic in connection with which the proportionals were applied than on traffic destined to points to which joint rates were published. This they have not done. We are therefore of opinion that the charges collected on shipments moving by way of the cross-lake routes were unreasonable to the extent that the joint through rates charged exceeded the lowest combinations composed of the sixth-class proportionals from the points of origin to the Lake Michigan west-bank crossings and the local or proportional interstate rates beyond in effect on the dates of movement. We further find that the complainant made the shipments as described and paid and bore the charges thereon herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the

rates herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Any outstanding undercharges or overcharges should be included in the statement submitted.

No. 5356.

LOUISVILLE CEMENT COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted June 3, 1918. Decided June 20, 1918.

Findings in the original report modified in accordance with decision of Supreme Court of the United States in *Louisville Cement Co.* v. *Interstate Commerce Commission*, decided April 29, 1918, and reparation awarded in that portion of claim previously held barred.

J. V. Norman for complainant.
Edw. D. Mohr for Louisville & Nashville Railroad.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

On October 7, 1913, after hearing, the Commission filed a report in this case, in an unreported opinion, awarding reparation to the complainant for part of its claim for an unreasonable rate charged and collected by defendant on shipments of coal billed from Woodbine, Ky., to Speeds, Ind., amounting to $595.65, but denied reparation for the balance of the claim amounting to $1,335.25. The facts were admitted and the only question in issue was whether the two-year limitation in section 16 of the act to regulate commerce had run against that part of the claim last mentioned. The Commission found that the rate charged and collected was unreasonable to the extent of 10 cents per ton on all shipments of coal made by the complainant over the line of the Louisville & Nashville Railroad between the points named during the entire period of time covered by the shipments. As the claim for this last payment was filed more than two years after the shipments had been delivered to the complainant, the Commission held that this part of the claim was "barred from our consideration," following our construction of the act in *Blinn Lumber Co.* v. *S. P. Co.*, 18 I. C. C., 430.

Thereafter the complainant instituted a proceeding in the supreme court of the District of Columbia, asking that a writ of mandamus issue against the Commission directing it to take jurisdiction of the claim which the Commission had held was barred by the limitation in the act. The writ was denied. On appeal to the Supreme Court of the United States it was held by the court, *Louisville Cement Co.* v. *Interstate Commerce Commission*, 246 U. S., 638, that the cause of

action accrues and the statute begins to run on the date the freight charges are actually paid. In this case the freight charges were paid February 1, 1911, the claim for reparation was filed within 2 years thereafter, and under the ruling by the Supreme Court this Commission had jurisdiction and may award reparation for the balance of the claim made and proved by the complainant.

Thereafter complainant filed its motion for an order of reparation for the $1,335.25, with interest from March 1, 1911. This proceeding was thereupon reopened and the motion served upon the defendant Louisville & Nashville Railroad Company, which has waived further hearing and interposes no objection to entry of the order as prayed.

We find that the complainant paid and bore the freight charges on the shipments in question; that it has been damaged and is entitled to reparation in the sum of $1,335.25, with interest.

Following the decision of the Supreme Court in the opinion referred to, and upon motion of the complainant assented to by the defendant Louisville & Nashville Railroad Company, an order will be entered granting the reparation asked for.

No. 9714.

PELICAN LUMBER COMPANY, INCORPORATED,

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.

Submitted April 1, 1918. Decided June 25, 1918.

Mound, La., not found entitled to the same rates as Vicksburg, Miss., on hardwood lumber to points in official classification territory. Complaint dismissed.

W. M. Barrow and *J. B. Robinson* for complainant.

R. Walton Moore and *Alex M. Bull* for Vicksburg, Shreveport & Pacific Railway Company; Yazoo & Mississippi Valley Railroad Company; and Illinois Central Railroad Company.

J. D. Youman for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCHORD, MEYER, AND AITCHISON.

Complainant operates a sawmill at Mound, La., which is on the Vicksburg, Shreveport & Pacific Railway, about 8 miles west of Vicksburg, Miss. It is about 6 miles inland from Delta Point, La., which is directly opposite Vicksburg and reached by ferry from that point. Competitors of complainant are located at Vicksburg. To points in official classification territory the rates on hardwood lumber from Mound generally range from 2 to 4 cents higher than from Vicksburg. Complainant alleges that the present adjustment is unreasonable and unjustly discriminatory because it does not afford Mound the same rates as Vicksburg. The general level of rates on lumber from the south has received the sanction of this Commission in previous cases, and the only question for our determination here is the propriety of the present relationship between Vicksburg and Mound.

The evidence respecting the rate structure in question is not very complete in detail. Some of the general statements made by witnesses are subject to exceptions which were not explained or are not fully borne out by the tariffs on file. It should therefore be understood that the statements herein made regarding the rates

in question are only general. Most of the lumber produced in the south is yellow pine, and to points in central freight association territory the adjustment of rates on hardwoods is controlled to a large extent by the adjustment on pine. The rates on pine from the blanket west of the Mississippi River, which includes Mound, are generally 1 cent higher than from the points in the blanket east of the river, which includes Vicksburg. The movement from Vicksburg consists mainly of hardwoods. While Vicksburg, on pine lumber, takes the same rates as other points in the blanket east of the river, it has rates on hardwoods generally from 1 to 4 cents lower than from other points in the blanket. Mound, however, does not as a rule enjoy lower rates on hardwoods than apply on pine from all points included in the blanket in which it is situated. The rates on hardwood from Vicksburg are lower than from any other point in that vicinity, because of the water competition on the Mississippi River. This competition is not very active; there is a large production of hardwood lumber at Vicksburg, but little, if any, is shipped from that point by water. However, there is potential competition, and its depressing effect upon rates has been repeatedly recognized by the Commission. The evidence unquestionably supports the defendants' view that higher rates from Vicksburg to Ohio and Mississippi river crossings and points in central freight association territory than at present maintained would tend to drive the lumber traffic to the water routes.

Is the situation substantially the same at Mound? As already stated, Mound is 6 miles inland from Delta Point, which lies across the river from Vicksburg. However, at Vicksburg the river bends toward the northwest, and at Youngs Point, a recognized landing northeast of Mound, the river is only about a mile and a half away from complainant's plant. There is a wagon road between Mound and Youngs Point, and if complainant should provide itself with facilities for hauling and for transferring the lumber to boats at Youngs Point, as it suggested it may do, it would be able to avail itself of such water transportation as might be had. Assuming that under these circumstances it is proper to say that water competition is potential at Mound as well as at Vicksburg, the fact remains that the degree of potentiality is much less at Mound than at Vicksburg, for the difficulties complainant must overcome are obviously greater and its prospects for economy considerably less than those of its competitors at Vicksburg.

To eastern trunk line territory the rates on hardwood from Vicksburg and the producing territory east of the Mississippi River are not made with reference to the rates on pine. They are made on the basis of a differential over the rates from Memphis, which in

turn are based on a differential over the rates from St. Louis. The rates on pine from Vicksburg are the same as those from Alabama points. The rates on hardwoods from Mound and the producing territory west of the river are 2 or 3 cents higher than those from Vicksburg and the territory east of the river, being the same as on pine from the same points, which in turn, subject to certain exceptions due to fourth section complications in the east, are generally 2 cents higher than the rates on pine from Vicksburg and the producing territory east of the river.

It should be said in general that owing to the use of different methods for arriving at the rates to various points it happens occasionally that the rate from Mound is the same as from Vicksburg. This is true with respect to the rates to New York City and to Nashville, Tenn. It is also pointed out that Dermott and Lake Village, Ark., on the St. Louis, Iron Mountain & Southern Railway several miles inland from the Mississippi River are accorded the same rates as points on the river. These and several other minor inconsistencies, and the absence of a fixed or definite relationship between the rates on pine and those on hardwoods were stressed, but there is no suggestion that they operate to the injury of complainant. In any event this is not a case in which we could harmonize the various situations. The question here is the propriety of the charges that complainant must pay over and above those paid by its competitors at Vicksburg.

The complainant alleges that the lower rates from Vicksburg apply via Mound and that there is therefore a violation of the long-and-short-haul rule. Several fourth section applications were accordingly assigned for hearing in connection with the case, but it was brought out at the hearing that the tariffs show that route to be closed.

Complainant asks that we require the establishment of milling in transit at Mound. Complainant does not produce a sufficient quantity of low-grade lumber to justify the continued operation of a box shook factory, and a suitable milling-in-transit arrangement would probably be of great advantage in this respect as it would enable complainant to bring in raw material from numerous other points. Milling-in-transit arrangements of one form or another are said to be provided for forest products quite generally in the south. The record does not make clear just what is desired, and no transit arrangement is in force at any other local station on the Vicksburg, Shreveport & Pacific.

The allegations of the complaint are not sustained, and an order missal should accordingly be entered.

McCHORD, *Commissioner:*

The report in this case was prepared by the examiner and served on the parties. Exceptions were filed by the complainant, and have been considered. We find that the report is in compliance with the facts, and that on the facts the conclusions reached by the examiner are correct, and the report is adopted. An order dismissing the complaint will issue.

No. 9706.

LEHIGH COAL & NAVIGATION COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 3, 1917. Decided June 25, 1918.

Refund of the actual expense incurred by complainant, under an agreement with the Pennsylvania Railroad Company, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware & Raritan Canal, authorized.

Henry S. Drinker, jr., for complainant.

George R. Allen for Pennsylvania Railroad Company.

Howard A. Lehman for Lehigh & New England Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

The examiner proposed the following report:

This is a proceeding brought to recover the cost of certain transportation facilities furnished by complainant in the movement of anthracite coal from mines in the Lehigh region in Pennsylvania to destinations on the Delaware & Raritan Canal and the Delaware River between April 4, 1913, and May 7, 1915. The facts, which were first brought to the attention of the Commission informally September 28, 1915, are as follows:

For a number of years defendant Pennsylvania Railroad Company, in connection with the Central Railroad Company of New Jersey and the Lehigh & New England Railroad Company, has maintained joint rail-and-water rates on anthracite coal from mines in Pennsylvania to destinations on or reached via the Delaware &

Raritan Canal. Under the arrangement in effect between the carriers participating in the through routes the expense of the water transportation is assumed by the Pennsylvania Railroad Company, hereinafter called defendant. That carrier, in order to provide for the movement by water, employed an independent contractor, who was paid for the use of the barges from Coalport (Trenton), N. J., to destination and for team towing on the canal and steam towing on the river.

Some time prior to 1908, the exact date not appearing of record, complainant undertook to avail itself of the joint rates established by defendants for transportation via the Delaware & Raritan Canal, but found upon investigation that the barges offered by defendant through its agent exceeded 100 tons capacity and were too large to reach the terminal facilities of certain of its consignees. Complainant thereupon applied to defendant for permission to substitute smaller barges, and, this being assented to, engaged an independent contractor to perform the water transportation at the rate paid by defendant for the same service. Under the arrangement then entered into it was agreed that if the complainant assumed the cost of the transportation on the canal and river defendant would reimburse it to the extent of the amount that the latter would have been required to pay for that portion of the through movement.

In May, 1915, the above arrangement was ordered discontinued as the tariffs made no provisions for the payment of the allowances in question. Investigation of the records developed that defendant had previously refunded to complainant the sum of $834.06, representing the amount the latter had paid for the water transportation between April 4, 1913, and December 1, 1914. At the request of defendant this amount was returned to it. Between April 22, 1915, and May 7, 1915, complainant had shipped 50 cars of coal, paying thereon, in addition to the tariff rates, the sum of $689.66 for boat freight, team towing, and steam towing. Payment thereof was declined by defendant.

Complainant contends that reimbursement of its actual expenses incurred in furnishing a transportation facility which defendants were under obligation to supply, under the circumstances hereinabove related, may properly be made under section 15 of the act, and that the refusal of the defendant to make refund has been occasioned solely by its neglect to incorporate in the tariffs the fact and the amount of the allowance. These contentions are admitted in defendant's answer.

The provision of section 15 applicable hereto is as follows:

If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more

than is just and reasonable, and the Commission may, after hearing, on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

There is no question in this proceeding of the reasonableness of the amount involved. It represents in the aggregate the precise sum that the defendant would have borne if it had transported the shipments through to destination, and its payment would in no way inure to the pecuniary advantage of the shipper. As the matter now stands defendant has in its possession the sum of $1,523.72 which it was not contemplated should be retained by it, and complainant has sustained an expense of a like amount in rendering a service and furnishing an instrumentality included in the rate paid for transportation. The circumstances show that complainant is clearly entitled to the reimbursement of its actual expenses in this connection, and the Commission sees no objection to the adjustment sought.

No order authorizing the refund appears to be necessary herein. If such allowances are to be made in the future, however, they should be duly authorized by tariff in accordance with section 6 of the act.

McCHORD, *Commissioner:*

The foregoing proposed report was served under rules of procedure providing for the filing of exceptions thereto within 20 days. No exceptions were filed.

Upon consideration of the record we approve and adopt the proposed report. An order will be entered dismissing the complaint.

No. 9298.

GUYTON & HARRINGTON MULE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted April 11, 1918. Decided June 27, 1918.

1. For many years prior to March 21, 1916, defendants' exclusive live-stock depot in Nashville, Tenn., was the old stockyards, on Seventeenth avenue. No tariff effective at the time showed that fact. About that date the location of the exclusive live-stock depot of the defendants was changed to the new stockyards, on Second avenue, but no tariffs showed that fact until September 15, 1916. During the interim a tariff of one of the defendants became effective July 25, 1916, which showed the location of its exclusive live-stock depot as the old stockyards, on Seventeenth avenue. The change in location of defendants' exclusive live-stock depot made it necessary for complainant to drive mules a mile and a half through the city between the old and new locations during the period from March 21, 1916, to December 21, 1916. From late in 1914 until September 15, 1916, both defendants in their filed tariffs had shown complainant as an industry located at and entitled to be served through the old stockyards on Seventeenth avenue. *Held:* The denial of service to complainant at the old stockyards prior to September 15, 1916, was the taking away of a privilege or facility granted by tariff and was a rule, regulation, or practice which changed, affected, and determined the value of the service rendered to the complainant as shipper and consignee.
2. The new stockyards were constructed and are maintained mainly for the handling of animals intended for slaughter, such as cattle, sheep, and hogs; they were not and are not adequate or safe for the receipt, handling, or delivery of draft animals, such as horses and mules but, in the absence of a claim and showing of unjust discrimination or undue prejudice, the Commission has no power to require defendants to provide either adequate or safe stockyard facilities.
3. Complainant is entitled to reparation for the charges paid and borne by it for the driving of mules between its yards and barns, adjoining the old stockyards, and the new stockyards during the period from March 21, 1916, to September 15, 1916, because the act of the defendants in denying complainant the services at the old stockyards offered by their tariffs was illegal. Other claims of complainant for reparation disallowed.

Perkins Baxter for complainant.
Fitzgerald Hall for defendants.
John B. Keeble for defendants and intervener.

REPORT OF THE COMMISSION.

ATTCHISON, *Commissioner:*

A report in this case was proposed by the examiner to which exceptions were taken. We have reviewed the record and in the light of the report, the exceptions thereto, and argument thereon, find as follows:

Complainant deals in mules and horses and within the terminal limits of Nashville has yards and barns for the handling of such animals. Its plant adjoins and is connected by leads and alleys with the yards and barns of the Union Stock Yards at Seventeenth avenue and the Nashville, Chattanooga & St. Louis Railway, hereinafter referred to as the old stockyards.

For many years prior to March 21, 1916, the defendants maintained their exclusive live-stock depot in Nashville for the receipt and delivery of all kinds of live stock at the old stockyards. On or about that date the new stockyards at Second avenue and Whiteside street were opened as their exclusive live-stock depot and the old stockyards were closed to local traffic. The distance through the city between the old and the new stockyards is about one mile and a half.

Both the old and the new stockyards were and are owned and controlled by the Union Stock Yards Company, a corporation which acts as agent for the carriers and through which, and its predecessors, the defendants provided and provide facilities for the receipt, delivery, and handling of live stock at Nashville. The Union Stock Yards Company intervened on behalf of the defendants at the hearing.

The complaint alleges that complainant many years ago established its plant adjoining the old stockyards and convenient thereto; that since March 21, 1916, defendants have refused to permit it to use the old stockyards and have compelled it to drive such mules as it has handled in its own yards from and to the new stockyards, through the streets of Nashville, at great expense, and with inconvenience to itself and danger to the public; that the old stockyards and complainant's plant are each entirely adequate and more accessible than the new stockyards, which latter are in certain respects inadequate and unsafe for the handling of horses and mules; that the establishment of the new stockyards as the exclusive live-stock depot of the defendants at Nashville antedated notification by tariff and was, therefore, illegal; and that although the old stockyards appeared in the tariffs up to September 15, 1916, as the live-stock depot of the defendants, the defendants refused, after April, 1916, and prior to September 15, 1916, to receive from complainant mules shipped in interstate commerce to be delivered at the old stockyards and insisted, notwithstanding

the provisions of the tariff, that such mules be delivered at the new stockyards, although the defendants were still using the old stockyards for feeding and watering mules in transit and although defendants well knew that delivery at the new stockyards would, and did, entail great expense to complainant for leading said mules through the streets.

It also sets forth that complainant had a contract to supply the British government with many thousands of mules; and that representatives of the British government, because of the inadequacy of the new stockyards and dangerous condition thereof, required complainant to deliver such mules at Columbia, Tenn., instead of at Nashville, thereby entailing extra transportation costs to complainant of $16 per car.

Complainant prays that the defendants be required to receive from and deliver at the old stockyards or at complainant's location at Seventeenth avenue and the Nashville, Chattanooga & St. Louis Railway all mules shipped in interstate commerce by complainant. It also claims reparation for the expense of leading mules through the streets of Nashville; for the additional costs of transportation on all cars required by British agents to be delivered at Columbia; and for the extra cost of feed at Columbia.

By amendment, offered at the hearing, it is alleged that complainant was subjected to undue prejudice and disadvantage in that the defendants, in violation of their tariffs, received and delivered horses and mules at the state fair grounds that were not for exhibition purposes or connected with the state fair association, although refusing to receive or deliver shipments of mules under similar circumstances and conditions at the old stockyards or the yards of complainant.

The record shows that defendants maintained their exclusive live-stock depot for the city of Nashville at the old stockyards location, Seventeenth avenue north and Railroad, for about 30 years, but no tariff ever attempted to show such location as the exclusive live-stock depot of either of them until on August 24, 1915, when the Nashville, Chattanooga & St. Louis Railway issued a tariff in which this was proposed. This tariff, however, made certain increases in the switching charges applying within the limits of Nashville, and for that reason was suspended in *Live Stock Switching at Nashville, Tenn.*, a proceeding consolidated with and decided as a part of the matters before us in *Nashville Abattoir, Hide & Melting Asso.* v. *L. & N. R. R. Co.*, 40 I. C. C. 134. In compliance with the order vacating the suspension, that tariff became effective July 25, 1916. The actual change in location of the exclusive live-stock depot of the defendants took place March 21, 1916, more than four months prior

to the effective date of the first tariff naming the old location as the exclusive live-stock depot of the defendants. By a tariff, effective September 15, 1916, the defendants specified the location of their exclusive live-stock depot at Nashville as "Second avenue north and Whiteside." Stating the matter again, the tariff situation was as follows: During all the time the old stockyards were used as the exclusive live-stock depot of the defendants no tariff showed that fact; from March 21, 1916, to September 15, 1916, the new stockyards, located at Second avenue north and Whiteside, were used as the exclusive live-stock depot of the defendants without tariff notice; and during the 52 days that the tariff of the Nashville, Chattanooga & St. Louis Railway showed the location of its exclusive live-stock depot as Seventeenth avenue north and Railroad, the notation was erroneous, as the old stockyards were not used for local traffic, and that carrier received and delivered live stock at Nashville only through the new stockyards located at Second avenue north and Whiteside.

By tariff effective December 21, 1916, the defendants reopened the old stockyards as a substation for the handling of horses and mules. A note stated:

> The arrangement provided herein is established temporarily because of the exigencies created by the European war and will be withdrawn as soon as the exigencies cease to exist, but not earlier than June 1, 1917.

By subsequent tariffs this arrangement has been continued to later dates and is now in effect.

The above statement relates only to tariff provisions showing the exclusive live-stock depot of the defendants. Their tariffs, however, for some time had shown the privileges and facilities granted the public and this complainant; and, putting aside questions raised by them with respect to their right to establish, maintain, or change such exclusive depot without tariff authority, we shall consider complainant's rights as defined in those tariffs. The Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company, by tariff notations effective, respectively, May 10, 1914, and December 26, 1914, showed the Guyton-Harrington Mule Company's plant as located at the stockyards on the Union Stock Yards track and also showed the Union Stock Yards as located at Seventeenth avenue north and Railroad on the Union Stock Yards track. These notations remained in effect until September 15, 1916.

By section 1 of the act all terminal facilities of every kind used or necessary in the transportation or delivery of property, moving as defined therein, are included in the term "railroad" as used in the act. By section 6 carriers subject to the act are required to file with the Commission schedules showing "all terminal charges * * *,

all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee."

The receipt and delivery of live stock, moving as defined in the act, at the old stockyards at Seventeenth avenue north and Railroad were privileges and facilities shown in tariffs of the defendants until September 15, 1916. The denial of the use of these facilities between March 21, 1916, and September 15, 1916, was a rule, regulation, or practice in contravention of defendants' tariff provisions which did change or affect the value of the service rendered to complainant as shipper and consignee; because of this denial certain carloads of mules moving in interstate commerce were driven between the new and old stockyards by complainant at costs which it paid and bore in addition to the published freight rates. We have hitherto recognized that where injustice and hardship to innocent shippers results from unreasonable acts, misconduct, or default of carriers in failure to make proper delivery of shipments, the shipper is entitled to recover from the carrier at fault damages in the sum of the actual or fixed, but not more than the reasonable, costs of making such delivery. *Sterling & Son Co.* v. *M. C. R. R. Co.*, 21 I. C. C., 451; *National League of Commission Merchants* v. *P. R. R. Co.*, 49 I. C. C., 85. It is not an answer to say, as was urged at the hearing, that the proper tariff notations were not made because the tariffs themselves were suspended. Suspension proceedings would be of little value if carriers could, without changes in tariffs, accomplish what the suspended tariffs proposed to do. Nor is it of importance that the particular reason for the suspension was an increase in switching charges, not changes in the privileges and facilities allowed to the public at the old stockyards, for the tariffs were suspended by entire schedules, and the object of the suspension was to maintain the status until the investigation was completed.

A large part of the record deals with complainant's contract with the British government. It is asserted that because of the removal of defendants' exclusive live-stock depot from the old stockyards to the new; that because mules driven through the streets between complainant's barns and the new stockyards became overheated, were lamed and injured, whereas no similar driving would have been necessary from the old stockyards to complainant's barns; and that because the new stockyards were inadequate and unsafe for the loading and unloading of mules; the agents of the British government declined to inspect or to buy mules to be loaded or unloaded at the new stockyards and demanded that the animals be submitted for

inspection at Columbia. On these grounds complainant asks as reparation certain alleged extra costs of transportation from Nashville to Columbia, together with certain additional costs of feeding at Columbia.

The contract with the British government is not set forth in the record, nor is its omission material. Losses or extraordinary and unanticipated expenses resulting from the refusal of the British agents to inspect or accept delivery of mules at the new Union Stock Yards are not such damages as are cognizable in this proceeding. The complainant is not entitled to reparation in any amount for losses so incurred. Its remedy, if any, is to be had through recourse to the courts.

The proof offered to show undue prejudice and disadvantage to complainant rests upon the fact that live-stock deliveries were made at the state fair grounds contrary to the tariffs, whereas from March 21, 1916, to December 21, 1916, deliveries to complainant at the old stockyards or at complainant's yards were refused. The defendants admit that such deliveries were made at the state fair grounds in sporadic instances, and confess that they were not justified by unusual conditions. In view, however, of the further fact that complainant was not in competition with shippers and receivers so illegally favored, it has suffered no damage by these acts of the defendants; and, as the tariffs have been amended to provide for the reasonable requirements of the public at the state fair grounds, we shall not further consider the matter of discrimination.

We come now to the main issues of this proceeding: Were the defendants entitled to maintain an exclusive live-stock depot at Nashville? And, if they were so entitled, were the facilities of the new stockyards adequate and safe?

Putting aside all matters pertaining to tariff notation of exclusive live-stock depots, as not necessary for determination in this proceeding, we take it that the affirmative answer to the first of these questions is reasonably well settled by the decision of the Supreme Court in the familiar case, *Covington Stock-yards Co.* v. *Keith*, 139 U. S., 128.

In *Nashville Abattoir, Hide & Melting Asso.* v. *L. & N. R. R. Co.*, *supra*, we said:

> The fact that a carrier has entered into a contract to make a particular stockyards its sole terminal for delivery and receipt of live stock can not be controlling. Such a contract, in common with all other private contracts, must be disregarded if in any way it transgresses or conflicts with any provision of the act. It is a matter of common knowledge that in many places live stock is delivered and received at two or more stockyards in the same city. No rule of universal application can be laid down. Each case must be determined ac-

cording to the facts, circumstances, and conditions presented. The interests of the public, or of a substantial part of the public, served by the carrier must be duly considered. There is here no showing that public necessity or convenience would be served or promoted by requiring the establishment of a second live-stock terminal in Nashville.

The defendants were entitled to maintain an exclusive live-stock depot at Nashville either directly or through agents, or to contract for the maintenance of such a depot by their agents.

With respect to the second question, viz, that of the adequacy and safety of the new stockyards for the handling of horses and mules, it would serve no useful purpose to review in detail the facts of record. It will suffice to say that they clearly show that the new stockyards were neither adequate nor safe for such purposes. It is further shown—in fact admitted in the testimony of the president of the Union Stock Yards Company—that the new stockyards were constructed primarily for the handling of cattle, sheep, and hogs, and that little regard was paid to the requirements of draft animals. The facilities at the new stockyards were not safe or adequate for the handling of horses and mules. But it appears, *supra*, that the defendants have amended their tariffs so as to provide for the loading and unloading of horses and mules at the complainant's yards during the exigencies of the existing war, and no further relief need be considered at this time.

It is contended by defendants that the power to require carriers to furnish facilities of the kind here in question has not been conferred upon us by the Congress and that we have not undertaken in the past to exercise such power. That we have no power to require the carriers to furnish safe and adequate facilities for the handling of horses and mules at Nashville or prescribe their character is no longer an open question, in the light of the court's holding in *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. We do not have before us a case of a claim and showing of unjust discrimination or undue prejudice.

Upon all the facts and circumstances shown of record, we find that during the period from March 21, 1916, to September 15, 1916, certain mules shipped in carload lots in interstate commerce were, as a result of defendants' wrongful acts, driven between the new stockyards and complainant's barns by complainant at costs which complainant paid and bore in addition to the transportation charges, and that complainant is entitled to reparation in an amount equal to the sum of such additional costs. Complainant is not entitled to reparation upon the other grounds upon which it claims.

Complainant should prepare a statement showing the details of the extra costs paid and borne by it during the period from March

21, 1916, to September 15, 1916, for driving mules, moving in interstate commerce, between its yards and barns adjoining the old stockyards, and the new stockyards, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an award of reparation.

In respect of the other issues the complaint will be dismissed.

No. 5537.

ANDERSON-TULLY COMPANY
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted March 30, 1918. Decided July 8, 1918.

Reparation awarded on shipments of box shooks, in carloads, from Vicksburg, Miss., to Port Arthur, Tex.

Brown & Anderson and *B. G. Brown* for complainant.

J. M. Souby for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original decision in this case, unreported, we found that the joint rate of 20 cents per 100 pounds applicable on numerous carloads of box shooks shipped within the statutory period from Vicksburg, Miss., to Port Arthur, Tex., by way of the Vicksburg, Shreveport & Pacific Railway, Shreveport, La., and the Kansas City Southern and the Texarkana & Fort Smith railways beyond, was unreasonable to the extent that it exceeded 16 cents, the aggregate of the contemporaneously applicable intermediate rates based on Delta Point, La. Reparation was found due, but no order was entered as the record was insufficient. The customary statement from complainant relative to the shipments and its verification by the defendants was required. Upon rehearing we affirmed our former findings, 39 I. C. C., 734. Complainant prepared a detailed statement of the shipments upon which reparation is claimed, but the defendants

refused to certify that the shipments consisted of box shooks, insisting that they consisted of box material, upon which the aggregate of the intermediate rates was 18 cents. The case was thereupon assigned for further hearing for the purpose of determining the amount of reparation due.

Complainant's witnesses, experienced in the manufacture of box shooks, testified that box shooks are the parts of wooden boxes—that is, the end and side pieces, tops, and bottoms—in such shape that it is only necessary to nail the parts together to produce the finished box, and that box material is a broader term, including box shooks and other articles, such as the rough lumber from which the shooks are manufactured. The Standard Dictionary defines shooks as follows: (1) A collection of staves, shaped and chamfered, and bound in form for transportation; and (2) a set of boards in order for nailing together into a packing box, and conveniently bundled for transportation. It does not define the term box shooks. The evidence shows that the shipments upon which reparation is claimed consisted of complete sets of box parts, each box intended to contain two 5-gallon cans of oil; that they were invoiced as shooks; that no further process was necessary to produce the finished boxes except nailing; that the purchaser nailed the parts together by an automatic nailing machine; that the parts were tied in bundles, each bundle containing the same kind of pieces; and that each car contained the parts for about 5,000 complete boxes. No evidence was introduced for the defendants at the rehearing. Reference was made to the fact that the shipments were billed as box material. As that term includes box shooks and as the evidence conclusively shows that the shipments consisted of box shooks, the fact that they were billed as box material is of no particular significance.

We find that the shipments consisted of box shooks; that the complainant, a corporation, made the shipments as described in our original report and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate found reasonable; and that it is entitled to reparation in the sum of $4,906.48, with interest.

An appropriate order will be entered.

No. 8480.

MACEY COMPANY ET AL.

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted December 1, 1917. Decided July 1, 1918.

Charges for trap-car service from complainants' plants to the Pere Marquette Railroad freight station at Grand Rapids, Mich., found to have been and to be unreasonable to the extent that they exceeded or may exceed $3 per car. Reparation awarded.

Ernest L. Ewing for complainants.

R. P. Paterson, *Glenn Warner*, and *Geo. C. Conn* for defendants.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Complainants are Macey Company, Kindel Bed Company, and Wilmarth Show Case Company, corporations engaged in the manufacture of furniture at Grand Rapids, Mich. In our original report, 42 I. C. C., 593, we found that the charges of the Pere Marquette Railroad, hereinafter called the defendant, for trap-car service from complainants' factories to defendant's freight station at Grand Rapids had not been fully justified. The defendant was given an opportunity to submit for our consideration and approval a schedule of trap-car charges on a per-car basis consistent with the carload switching charges at Grand Rapids, and in conformity with our suggestions in *Trap or Ferry Car Service Charges*, 34 I. C. C., 516. The question of reparation was reserved. On May 7, 1917, the defendant established certain trap-car charges covering this service. We have previously declined to suspend the operation of these schedules on protest of complainants, but in so doing did not pass upon the reasonableness of the charges. The case was reopened for further hearing in order to give the defendant an opportunity to justify the charges, and to develop a record which would enable us to determine what would have been and would be reasonable charges.

Prior to May 7, 1917, the defendant's charges for switching less-than-carload shipments in trap cars from complainants' factories to defendant's freight station at Grand Rapids was 50 cents per ton, minimum 10 cents per shipment, subject to certain minimum weights;

or $3 per car on cars containing freight weighing less than the prescribed minima. The charges established on that date were applicable under the following tariff provisions:

When cars contain less than 10,000 pounds for road-haul movement, or when they are so loaded as to require reworking at initial shipping point, either to obtain correct weights or on account of varying destinations, a charge to cover switching and handling will be made as follows:

(*a*) When the distance from the industrial tracks to the central or distributing warehouse is 2 miles or less, $3 per car.

(*b*) When the distance is over 2 miles and not exceeding 3 miles, $4 per car.

These provisions are still in effect except that paragraph (*b*) now provides the $4 charge per car for distances over 2 miles but not beyond the switching limits.

For the defendant it was stated that in fixing 2 miles as the maximum distance for which the $3 charge would apply it was understood that the complainants' industry tracks were included within that distance, but that measurements have since disclosed that the distances from these industry tracks range from 1.79 to 2.22 miles. A willingness was expressed on defendant's behalf to amend the tariff by eliminating the $4 charge and establishing a uniform charge of $3 from all three of the factories, as was originally intended.

The evidence introduced for defendant as to the cost of performing this service, outside of showing that the cost had increased, is not materially different from that introduced at the former hearing. Without setting forth this evidence in detail, it is sufficient to state that, by providing for trap-car charges on the per-car basis, certain objectionable features of the former method of stating such charges referred to in our original report have been eliminated, and the record fairly shows that the $3 charge, which defendant now seeks to justify, is not excessive for the service performed. Defendant points out that $3 is the lowest switching charge maintained by it at Grand Rapids either for reciprocal switching between connecting roads or for switching to or from industries.

The complainants renew the contention made upon the original hearing that the assessment of charges for this service is unjustly discriminatory in view of the fact that the defendant furnishes substation facilities which are available to other furniture manufacturers located in other sections of Grand Rapids and which make it unnecessary for them to use the trap-car service. This contention was fully considered in our original report, and found to be without merit in so far as the trap-car charges in issue are concerned, and no additional evidence has been introduced which would justify a different conclusion. Drayage costs, concerning which evidence was also introduced, do not determine the reasonableness of defendant's charges for trap-car service.

We find that the trap-car charges legally applicable were, are, and for the future will be unreasonable to the extent that they exceeded or may exceed $3 per car. We further find that charges in excess of $3 per car were collected on numerous trap cars containing one or more interstate shipments forwarded from complainants' industry tracks to defendant's freight station at Grand Rapids between September 22, 1914, and May 6, 1917, inclusive; that the complainants paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest.

The exact amount of reparation due can not be determined upon the present record, and complainants should prepare statements showing as to each trap car concerned the date of movement, car initials and number, contents, points of origin and destination thereof, weight, charge applied, amount of charges and date collected, charge found reasonable and legal and charges applicable thereunder, and the amount of reparation due under our findings herein, which statements should be submitted to the defendant for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation. The $3 charge was assessed on all of complainants' trap cars forwarded on and after May 7, 1917; but, based on the distances above referred to, some of these shipments appear to have been undercharged. If so, the collection of these undercharges may be waived.

An appropriate order will be entered.

No. 9572.

CALIFORNIA WALNUT GROWERS ASSOCIATION ET AL.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted December 5, 1917. Decided July 2, 1918.

1. Complaint attacking rates on walnuts and almonds in carloads from California producing points to points in intermountain territory, and in defined territories, Colorado and east, as unjust, unreasonable, unjustly discriminatory, and unduly prejudicial dismissed.
2. Reparation denied.

George E. Farrand and *Cassoday, Butler, Lamb & Foster* for complainants.

E. V. Camp, George D. Squires, and *A. S. Halsted* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, MEYER, HALL, AND ANDERSON.

The following is in substance the statement of the issues and facts proposed by the examiner:

The pleadings in this case put in issue the rates on walnuts and almonds in carloads from producing points in the state of California to points in intermountain territory and all defined territories east thereof to the Atlantic seaboard. The complaint alleges (*a*) that these rates are unjust and unreasonable *per se* in violation of section 1; (*b*) that they subject complainants to unjust discrimination in that they are higher than rates charged for like and contemporaneous services in the movement of other commodities between the same points in the same direction, in violation of section 2; (*c*) that they give to persons, firms, and corporations shipping, and to the particular descriptions of traffic moving, under lower rates between the same points, undue preference and advantage and subject complainants and the traffic of walnuts and almonds to undue prejudice and disadvantage, in violation of section 3; and (*d*) that they subject complainants to undue prejudice and disadvantage in favor of persons, firms, and corporations engaged in shipping the same commodities from Atlantic seaboard and Gulf ports to the same destinations, in violation of section 3. It is alleged further (*e*) that some of the rates from California producing points to points

in intermountain territory are greater than the aggregates of the intermediate rates, in violation of section 4. The Commission is asked to prescribe just and reasonable rates, rules, and regulations in lieu of those now applied, to require defendants to cease and desist from the unjust discrimination and undue prejudice and disadvantage alleged, and to make "such award of damages to each complainant as may be warranted by the evidence adduced." The answers of defendants are general denials.

THE COMPLAINANTS.

The two complainants are the California Walnut Growers' Association and California Almond Growers' Exchange, cooperative nonprofit associations organized under the laws of California, and composed of growers and associations of growers engaged in the production of walnuts and almonds. The objects of these associations are generally to promote the industry, and particularly to receive, grade, pack, and market the nuts grown or controlled by their members. When received by the local packing plants the nuts become the property of the associations, and the associations are the consignors of all shipments. The selling prices are fixed and the nuts sold by the associations, and at the close of each season the proceeds, less expenses, are distributed pro rata among the members according to the quantity of nuts turned in by each member. The complainant organizations handle about 75 per cent of the walnuts and almonds shipped out of California.

THE INDUSTRY.

About 97 per cent of the walnuts produced in California are grown in the southern counties of the state, and about 3 per cent in the vicinity of Sacramento. With the exception of a small production in the territory surrounding Los Angeles the almond industry is centered in Sacramento and surrounding counties. During the year 1916 the production of walnuts in California was 14,000 tons; and of almonds, 3,250 tons.

The average price of the highest grade walnuts sold through the association during the year 1916 was 15.5 cents per pound. The average price received for California almonds during that year was 13.97 cents.

COMPETITIVE CONDITIONS.

California walnuts are sold in competition with walnuts imported from southern Europe, the principal producing countries being France, Italy, and Spain. Some walnuts are also imported from China and Chile, but the amount of these importations is comparatively small. During the year 1916 the importations of foreign wal-

nuts aggregated 16,500 tons, as compared with a total production in California of 14,000 tons. Of the total consumed in the United States, California supplies about 45 per cent and southern Europe about 55 per cent. The European crop amounts to approximately 400,000 bags per year, of which about 330,000 bags reach the United States.

The California almonds are also sold in competition with foreign almonds, the leading producing countries being Spain and Italy. During the year 1916 the importations into the United States of shelled almonds amounted to about 8,500 tons, and of unshelled almonds about 2,500 tons. From 70 to 80 per cent of the almonds consumed in this country are imported. The competition of the foreign nuts has been increasing, especially since the beginning of the European war. This is largely due to the closing of the German markets. Germany usually consumed about 100,000 bags, or over 5,000 tons, and the foreign producers have been obliged to find an outlet for that surplus in this country.

The prices of the American nuts are based to a large extent on foreign crop conditions and foreign prices, and not so much on the cost of production in California. The practice seems to be to fix the price of the California nuts in relation to that of the foreign nuts in New York City, and then apply that price uniformly throughout the country east of the Rocky Mountains, the freight rate from California being blanketed to nearly all that territory. The competition of the foreign nuts reaches into all parts of the United States; but it is especially keen as far west as a line drawn through central Nebraska in respect to walnuts, and the Missouri River in respect to almonds. The consumption in Omaha, for example, is 40 per cent of foreign nuts and 60 per cent of California nuts. About 75 per cent of the imported nuts are distributed east of the Mississippi River. Notwithstanding this fact the greatest distribution and the greatest increase in the consumption of California nuts has been in the eastern states. This was attributed by complainants largely to increased prosperity in that territory. During the year 1916 the distribution of California walnuts was 44 per cent west of the Mississippi River, 22 per cent between the Mississippi River and the Buffalo-Pittsburgh line, and 34 per cent east of that line; of almonds, 15 per cent to and including Denver, 33 per cent east of Denver to and including Chicago, 8 per cent from Chicago to and including Pittsburgh, and 44 per cent east of Pittsburgh.

There are several grades of foreign nuts and also of the California nuts. The foreign nuts are not sorted according to size, and are not [illegible] with any guaranty as to percentage of perfect meats. They are [illegible] the California producers call "orchard run." As a means of [illegible]ffectively meeting the competition of the foreign nuts the

California producers wash their product and sort it according to size and color and sell it with a guaranteed percentage of perfect meats. In the past they have been rewarded for these extra services by securing on such selected nuts slightly higher prices than those realized by their foreign competitors.

TRANSPORTATION CHARACTERISTICS.

Walnuts and almonds are packed in strong burlap bags weighing from 1 to 1¼ pounds. A bag of walnuts weighs exactly 100 pounds net, and a bag of almonds from 75 to 110 pounds. During the year 1916 the average loading of walnuts was 27,296 pounds and of almonds, 29,852 pounds. The minimum weight on both walnuts and almonds is 24,000 pounds. Complainants are willing to accept a minimum weight of 30,000 pounds on 36-foot cars, and of 36,000 pounds on 40-foot cars, provided the rates are reduced.

The nuts are shipped in ordinary box cars except where refrigerator cars are furnished. No extra care is required and no extra service is given in the transportation of nuts. An exhibit filed by complainants showing the time in transit of all shipments made during a year's period indicates that the shipments move at an average rate of 7¼ miles per hour. Nuts are not easily susceptible to damage, and such claims are comparatively small.

With one or two exceptions, the packing plants of complainants are located on sidings adjacent to the main line serving the point of shipment. Except at four points, all terminal services required in setting in the empties and taking out the loaded cars are performed by road crews. At practically all the shipping points the empties used for the loading of nuts are supplied by cars coming in under load, or by empty cars returning in the direction of the loaded movement of nuts. During the year 1916 complainants shipped out of California 595 cars of walnuts, of which 503 cars went to territories east of the Rocky Mountains; and of almonds, 142 cars, of which 130 cars went to the above-described territories.

THE RATES.

The rates on nuts, like those on many other California products, are blanketed from the Rocky Mountains to the Atlantic seaboard, except to the territory east of the Mississippi River and south of the Ohio River. The blanket rate is $1.40 per 100 pounds. The rates to the southeastern territory range from $1.43, the rate to Nashville, Tenn., to $1.69, the rate to Waycross, Ga., and one or two other points. The general basis of the rates on nuts to that territory is the aggregate of the California-Mississippi River proportion of the California-Cincinnati rate and the amounts added

thereto, usually the local rates, by the southeastern lines. To points in intermountain territory the rates are not constructed on any uniform basis. The rates from Sacramento and Santa Ana, representative producing points in northern and southern California, to Spokane, Wash., for example, are 82 cents and $1.04, respectively, which are the aggregates of the intermediate rates based on Portland, Oreg. The factors up to Portland are water-compelled rates. To Butte and Helena, Mont., representative Montana common points, the rates from California are on a parity with the rates from the Missouri River, although the distances from the California producing points are greater than the distances from Missouri River points. To Utah common points the rates from California points are said to be related to the rates to the Missouri River. The commodity rate on nuts from Sacramento to Ogden, a distance of 693 miles, is $1.15, as against a fourth-class rate of 96 cents; while the commodity rate from Missouri River points to Ogden, a distance of approximately 1,000 miles, is $1.30, as against a fourth-class rate of $1.26. The $1.15 rate is also applied from the Santa Ana group of producing points in southern California, a distance of about 1,044 miles.

Walnuts and almonds in carloads are classified fourth class, minimum weight 30,000 pounds, in the western classification, under the heading of edible nuts. No distinction is made as between the California nuts and other kinds of nuts, such as black walnuts, pecans, hazel nuts, and hickory nuts, which are produced in other parts of western classification territory and move in fairly large volume. The latter nuts are generally lower in value and heavier in weight per cubic foot than the California walnuts and almonds. The official classification rating on nuts is fourth class; the southern classification rating, fifth class.

When the commercial production of nuts began in California many years ago the class rates to defined territories east of the Rocky Mountains were blanketed. The fourth-class rate to the blanket was then $1.60. Instead of applying this rate with a minimum weight of 30,000 pounds on nuts, the carriers established a commodity rate of $1.30, with a minimum weight of 24,000 pounds. On January 1, 1909, this rate was increased to the present rate of $1.40, along with similar increases in the rates on other commodities. The class rates to eastern defined territories are now graded according to distance, the fourth-class rates ranging from $1.60 at Denver to $2.25 at New York City. Complainants prefer to have the blanket system of rates continued on nuts.

REASONABLENESS OF THE RATES.

To show that the blanket rate of $1.40 is unjust and unreasonable complainants compare the earnings therefrom with (*a*) the average

earnings on all freight of the principal lines engaged in transcontinental traffic, (*b*) the earnings received from the rates on other commodities moving out of California, and (*c*) the cost of the service as deduced from certain cost figures appearing in *Rates on Asphaltum, Barley, Beans, and Canned Goods*, 33 I. C. C., 480. These comparisons will be considered in order, and will be confined to the car-mile earnings.

(*a*) The first comparison was not made at the hearing, but complainants refer to it in a general way in their brief. In respect thereto the following table of statistics is interesting; the figures on walnuts and almonds being for the calendar year 1916, and on all freight for the year ended June 30, 1916:

	Average haul.	Weight per loaded car-mile.	Average car-mile revenue.
	Miles.	*Tons.*	*Cents.*
Walnuts (total average haul)	2,496	13.63	15.29
Almonds (total average haul)	2,728	14.92	15.31
All freight:			
Southern Pacific	264	19.82	20.08
Union Pacific	412	17.88	15.37
Chicago, Milwaukee & St. Paul	262	17.94	13.58
Chicago & North Western	145	18.12	14.75
Atchison, Topeka & Santa Fe	293	17.14	16.52
Chicago, Rock Island & Pacific	235	16.83	14.52
Chicago, Burlington & Quincy	275	20.20	14.33
Pennsylvania Company	73	27.44	16.82
Pennsylvania Railroad	171	27.93	17.14
New York Central	209	20.76	12.61
Baltimore & Ohio	196	28.43	15.92

The average car-mile earnings on all freight are the net earnings after deducting switching absorptions and similar items of expense, and include the earnings on state rates and divisions of joint rates, whereas the earnings on walnuts and almonds are the gross earnings on a single rate. The average haul on all freight is the average haul of a single railroad, while that on walnuts and almonds represents the total average haul of all the lines participating in the traffic. The figures given include both carload and less-than-carload business. As the higher rates on the latter do not counterbalance the lighter loading, this results in lower car-mile revenue than if carload traffic only were considered. On the basis of the average hauls, it would appear that the center of consumption of nuts in the blanket territory is somewhere east of Chicago. To reach that point from California, at least two lines must, and as many as five or six lines may, participate in the movement. Moreover, the average earnings on all freight include the earnings on numerous heavy low-grade commodities, the aggregate volume of which is a large percentage of the total volume of all freight handled by each of the lines indicated. The wide difference in the car-mile earnings of the Pennsylvania Railroad and the New York Central, two important roads operating

in much the same territory, illustrates the care that must be exercised in attempting to draw any conclusions from such data.

(*b*) Attached to the petition is an exhibit comparing the $1.40 rate on nuts with the rates on 26 other groups of California products. It developed at the hearing that this exhibit contained some errors, and another exhibit was introduced in lieu thereof, comparing the rates, ton-mile earnings, and car-mile earnings on walnuts and almonds from Los Angeles and Sacramento to Chicago with those on 23 other groups of California products from and to the same points. The subjoined table is taken from this exhibit and from other evidence appearing of record.

California products from Los Angeles to Chicago.

Commodities.	Rate.	Minimum weight.	Minimum revenue.		Value per minimum car.
			Per car.	Per car-mile.[1]	
	Cents.	*Pounds.*		*Cents.*	
Alfalfa meal, etc	60	40,000	$240	11.14	$512.00
	50	50,000	250	11.60	.....
Apples, fresh	100	30,000	300	12.93	812.50
Apricot and peach kernels	90	30,000	270	12.54	465.00
Beans and peas, dried	85	40,000	340	15.78	2,480.00
	75	50,000	375	17.42	.....
Brandy, in wood	85	30,000	255	11.83	6,175.00
Brandy, in glass	100	30,000	300	13.93	.....
Cabbage	75	24,000	180	8.36	595.20
Cabbage and vegetables, mixed	100	20,000	200	9.29	.....
Cereals	90	40,000	360	16.72	.....
Flax fiber	100	24,000	240	11.14	.....
Fish, dried, smoked or salted	85	30,000	255	11.83	.....
Grape juice	75	30,000	225	10.45	.....
Honey	100	30,000	300	13.93	2,100.00
Olives and olive oil	100	30,000	300	13.93	6,425.00
Onions	75	30,000	225	11.83	1,050.00
Peach and apricot pits	85	30,000	255	11.83	.....
Petroleum	90	30,000	270	12.54	223.75
	55	60,000	330	15.33	.....
Potatoes	75	30,000	225	10.45	522.00
Raisins and prunes	110	40,000	440	20.44	2,653.00
	100	60,000	540	25.08	.....
Sirup	75	36,000	270	12.54	1,134.00
Vegetables, fresh	100	20,000	200	9.29	.....
Vinegar	90	40,000	400	18.58	.....
Wine	75	30,000	225	10.45	.....
Average	85.2	34,392	287.77	13.37	1,936.00
Walnuts and almonds	140	24,000	336.00	15.61	3,540.00

[1] Based on distance of 2,152 miles.

The foregoing table shows that while the minimum car-mile earnings on walnuts and almonds are greater than the average minimum car-mile earnings on the other products, the average minimum car value of walnuts and almonds is greater than that of the other products. The rates on alfalfa meal, cabbage, cabbage and vegetables mixed, onions, potatoes, and fresh vegetables do not apply to territory east of Chicago, so that the average hauls at those rates are considerably less than the average hauls on walnuts and almonds at the $1.40 rate. To territories east of Chicago the rates on alfalfa meal, cabbage, onions, and potatoes are the aggregates of the rates shown to Chicago and the local rates beyond; on fresh

vegetables, and cabbage and vegetables mixed, the rates range from $1.10 to $1.25. Under the circumstances comparisons of the rates on those commodities to Chicago with a blanket rate which applies as far east as New York are not persuasive. Eliminating the six commodity items referred to, the average minimum car-mile earnings on the remainder of the products shown in the table is 14.51 cents, as compared with 15.61 cents on walnuts and almonds. The rates shown on the remainder of the commodity items are blanket rates applying to the same territory as the $1.40 rate on walnuts and almonds, but the record contains no information as to the average hauls of those commodities.

Criticizing the comparison defendants contend that the circumstances and conditions surrounding the movement of the other commodities and those surrounding the movement of nuts are so dissimilar that the rates are not properly comparable. They state that the volume of the movement of most of the other commodities is much greater than that of walnuts and almonds. The annual movement of nuts from California is about 1,000 cars, whereas that of some of the other commodities is as great as 25,000 cars. On the other hand, some of the other commodities move in refrigerator equipment, which is heavier and more expensive to handle than common box-car equipment in which nuts are loaded. Defendants state further that the rates on all the other commodities were made to meet either local market competition throughout the country or water-carrier competition through the Panama Canal. One of their witnesses explained fully the force of these conditions in respect to each commodity, and testified that the rates made were necessary to insure a rail movement from California. Complainants do not deny that the rates made on the other commodities were justified by competitive conditions, but they insist that similar competitive conditions obtain in respect to walnuts and almonds, and that therefore a correspondingly low rate should be applied on those commodities. In addition to the foreign competition on nuts, which corresponds to the local market competition encountered on the other commodities, there was some water-carrier competition for the movement of nuts prior to the closing of the Panama Canal. A witness for defendants admitted that the carriers were considering a reduction in the $1.40 rate to meet that water competition, but the competition ceased and the proposed reduction was abandoned.

In presenting the comparison shown in the above table, counsel for complainants stated that the purpose was to select rates on those products "that had minimum weights somewhere near the minimum weight on walnuts;" but a check of the tariff from which the rates were taken indicates that other commodities bearing about the same carload minima as the commodities selected, but a somewhat higher

average level of rates, were omitted from the comparison. Among the important commodities omitted were oranges and lemons. In *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 19 I. C. C., 148, 22 I. C. C., 149, the Commission considered the rates on these two commodities. It was found that the rate of $1.15 on lemons from California producing points to the same blanket to which the rate of $1.40 applies on nuts was unjust and unreasonable to the extent that it exceeded $1, but the rate of $1.15 on oranges from and to the same points was not disturbed. It appeared in that case, and was confirmed by a witness for complainant in this case, that the average haul of lemons is about 1,900 miles and of oranges about 2,200 miles. These average hauls are considerably shorter than those of walnuts and almonds, which are about 2,500 miles and 2,700 miles, respectively. During the year 1916 the total movement of lemons was 7,016 cars, and of oranges 37,897 cars, as compared with approximately 1,000 cars of walnuts and almonds. The average loading of lemons and oranges is slightly heavier than that of walnuts and almonds. On the other hand, both lemons and oranges move in refrigerator cars, while nuts move in box cars.

(*c*) In explaining the competitive conditions surrounding the eastbound movement of various California products, a witness for defendants incidentally referred to the report in *Rates on Asphaltum, Barley, Beans, and Canned Goods, supra*, for a statement of such conditions in respect to the movement of beans. In that case the Southern Pacific sought authority to establish a rate of 40 cents per 100 pounds, minimum weight 80,000 pounds, on beans and three other commodities from California ports via rail to Galveston, Tex., and steamer thence to various Atlantic coast ports. The proposed rate was so low as to raise the question whether it was sufficient to pay the out of pocket cost of handling the business, and the applicant carrier accordingly submitted figures intended to show what that cost was for handling a carload of 80,000 pounds from San Francisco to Galveston, thence to New York. In their brief complainants use these figures to demonstrate that a blanket rate of 85 cents would be just and reasonable on walnuts and almonds.

The cost figures submitted in that case were prepared as of the two-year period ended June 30, 1914. There is no evidence in the present record on which either to find that those figures fairly represent the present out of pocket cost, or to accept complainants' assumption that the cost of handling freight from San Francisco to Galveston is the same per car-mile as that from the numerous nut-producing points to Chicago.

Complainants' evidence in respect to the reasonableness of the rates to intermountain territory was limited to exhibits showing the car-mile and ton-mile earnings thereunder; the instances where the

through rates exceed the aggregates of the intermediate rates; and the instances where the commodity rates exceed the fourth-class rates. A witness for defendants stated that the carriers are now going through the tariffs and correcting the fourth section departures referred to, but no justification was submitted for the maintenance of commodity rates on nuts higher than the fourth-class rates. In this connection it may be added that the carload movement of nuts to the intermountain territory is very small.

THE ISSUE OF UNJUST DISCRIMINATION.

The charge of unjust discrimination seems to be predicated on the fact that the rates on some California products are lower than the rates on walnuts and almonds between the same points in the same direction, and on the allegation in the petition that the transportation services given to the other products and those given to walnuts and almonds are "like and contemporaneous" and rendered "under substantially similar circumstances and conditions." The blanket rates on the other commodities referred to range from 50 cents to $1.10, and complainants demand a blanket rate on walnuts and almonds of 85 cents. It is obvious that, as compared with nuts, other products such as petroleum, cabbage, and sirup, and even apricot and peach pits, do not constitute a like kind of traffic within the meaning of section 2. Furthermore, the testimony of complainants' own witnesses shows that the average values, the hazards of transportation, and the average car loadings of the other commodities vary, that the equipment used in the carriage of all the other commodities is not of the same character, and that the circumstances and conditions in general are dissimilar. It follows that the services given to the other commodities are not rendered under substantially similar circumstances and conditions within the meaning of section 2. See *Board of Trade of the City of Chicago* v. *C. & A. R. R. Co.*, 27 I. C. C., 530, 534.

In this connection it is contended further that defendants equalize commercial and market conditions on the other commodities, but not on walnuts and almonds, and that thereby complainants, and nuts as a particular description of traffic, are subjected to undue prejudice and disadvantage. The only basis for this contention is the fact that the rates on the other commodities are lower than the rates on walnuts and almonds. It does not follow that the carriers have equalized commercial and market conditions on other commodities but have not equalized such conditions on nuts. They have analyzed the various competitive and commercial conditions incident to the successful marketing of different California products, and have established the rates which, in their judgment, were necessary to insure a rail movement of the surplus supply of each product to eastern defined territories. To date it has not been necessary to

make as low a rate on nuts as on some of the other products, but the fact that the California nuts have moved freely to the very territories where most of the imported nuts have been distributed indicates that the rate made on nuts has been low enough to meet the competitive conditions in respect to that particular California product. In any event, it is well settled that discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored, and that generally a competitive relation between the commodities must appear. *Board of Trade of Chicago* v. *A. T. & S. F. Ry. Co.*, 29 I. C. C., 438, 448. It does not appear here that the higher rate on nuts has been a source of advantage to the shippers of the other commodities, or that there is any real and substantial competitive relation between nuts and the other California products.

THE ISSUE OF UNDUE PREJUDICE AND DISADVANTAGE.

Complainants contend that they are subjected to undue prejudice and disadvantage and that the importers of the foreign nuts are unduly preferred by the adjustment of the rates as between California producing points, New York, and New Orleans on the one hand and points in defined territories, Denver, and east on the other. In support of this contention an exhibit was introduced showing a comparison of the rates from the three sources of supply to representative points in the territory referred to. The subjoined table is taken from this exhibit.

To—	From New York.			From New Orleans.			From Los Angeles.		
	Miles.[1]	Rate.[2]	Revenue.[3]	Miles.[1]	Rate.[2]	Revenue.[3]	Miles.[1]	Rate.[2]	Revenue.[3]
Denver	1,943	$1.27	1.307	1,348	$0.84	1.246	1,419	$1.40	1.973
Colorado Springs	1,982	1.27	1.281	1,274	.84	1.319	1,348	1.40	2.077
Pueblo	1,965	1.27	1.291	1,230	.84	1.366	1,300	1.40	2.154
Butte	2,435	1.88	1.544	2,153	1.61	1.496	1,211	1.30	2.147
Helena	2,471	1.88	1.522	2,156	1.61	1.493	1,283	1.30	2.027
Roundup	2,177	1.77	1.617	2,130	1.61	1.512	1,471	1.40	1.903
Kansas City	1,332	.668	1.003	887	.53	1.195	1,807	1.40	1.549
St. Joseph	1,381	.668	.963	950	.53	1.116	1,781	1.40	1.572
Omaha	1,397	.713	1.021	1,077	.57	1.058	1,814	1.40	1.544
East St. Louis	1,061	.49	.932	701	.35	.990	2,084	1.40	1.344
Quincy, Ill	1,136	.49	.862	841	.351	.835	1,999	1.40	1.401
Rock Island	1,090	.49	.899	934	.351	.729	2,094	1.40	1.337
Birmingham	990	.69	1.394	355	.49	2.760	2,358	1.48	1.255
Atlanta	876	.66	1.507	493	.56	2.272	2,281	1.57	1.377
Nashville	953	.40	.839	563	.50	1.776	2,190	1.43	1.305
Milwaukee	991	.42	.845	1,015	.288	.567	2,346	1.40	1.194
Madison	1,039	.575	1.107	1,060	.443	.835	2,131	1.40	1.314
Cleveland	579	.30	1.036	1,098	.485	.883	2,562	1.40	1.093
Cincinnati	758	.365	.963	836	.24	.574	2,423	1.40	1.155
Buffalo	396	.23	1.162	1,281	.54	.843	2,773	1.40	1.009
Pittsburgh	440	.25	1.136	1,147	.525	.915	2,677	1.40	1.045
St. Paul	1,319	.60	.909	1,304	.468	.718	2,126	1.40	1.364
Sioux City	1,419	.735	1.036	1,175	.61	1.038	1,915	1.40	1.462
Fargo, N. Dak	1,571	.895	1.139	1,517	.763	1.006	2,136	1.40	1.311
Chicago	909	.42	.923	930	.288	.619	2,261	1.40	1.238
Average	1,305	.776	1.129	1,138	.649	1.167	1,992	1.40	1.486

[1] Short-line distances in miles. [2] Rates per 100 pounds in dollars. [3] Revenue per ton-mile in cents.

The above table shows that, taking all the destinations together, Los Angeles pays an average rate of $1.40 for an average distance of 1,992 miles, or 1.486 cents per ton-mile; New York, an average rate of 77.6 cents for an average distance of 1,305 miles, or 1.129 cents per ton-mile; and New Orleans, an average rate of 64.9 cents for an average distance of 1,138 miles, or 1.167 cents per ton-mile. It will be noticed, however, that all but five of the destinations selected take the blanket rate of $1.40 from Los Angeles, and that no points east of the Buffalo-Pittsburgh line are included, although a large percentage of the California nuts are distributed in that territory. If points east of that line were included, the average ton-mile revenue from Los Angeles would be reduced, while that from New York would be increased. This shows the difficulty of comparing a rate applicable to a large blanket with rates graduated according to distance. The only fair way to make such a comparison is to ascertain as nearly as possible the center of distribution on the blanket rate and contrast the revenue per ton-mile on the short-line distance to that point with that on the average short-line distance at the graduated rates. The average hauls of walnuts and almonds on the $1.40 rate and the percentage quantities distributed in the different territories prove that the center of distribution is approximately 300 miles east of Chicago, or a short-line distance of about 2,452 miles from Los Angeles and 2,482 miles from Sacramento, an average of 2,467 miles. For this distance the revenue per ton-mile at the $1.40 rate is 1.135 cents, which is slightly higher than the average from New York and slightly lower than the average from New Orleans.

HALL, *Commissioner*:

After making substantially the foregoing statement of issues and facts, the examiner proposed that we should find and conclude:

(1) That the blanket rate of $1.40 per 100 pounds on nuts from California producing points to points in defined territories in and east of the Rocky Mountains, except the territory east of the Mississippi River and south of the Ohio River, and the rates basing thereon to points in the southeastern territory referred to, have not been shown to be unjust, unreasonable, unjustly discriminatory, or unduly prejudicial, and that as to all these rates the complaint should be dismissed.

(2) That the commodity rates on nuts to points in intermountain territory are unjust and unreasonable to the extent that they exceed the fourth-class rates contemporaneously in effect to the same points and to the extent that they exceed the aggregates of contemporaneous intermediate rates subject to the act whether such intermediate rates

be commodity rates or the fourth-class rates. As the defendants are now curing the fourth section departures referred to and the record does not indicate definitely the number and extent of the commodity rates which exceed the fourth-class rates no order should be entered at this time. The carriers should promptly revise their rates to that territory in accordance with the conclusions herein announced.

(3) That as no definite rates are fixed herein reparation on shipments to points in intermountain territory should be denied under authority of the principles announced in *Anadarko Cotton Oil Co.* v. *A., T. & S. F. Ry. Co.*, 20 I. C. C., 43.

Complainants noted exceptions to the proposed statement and conclusions, and argument was had thereon. For convenience these exceptions may be divided into those relating to (1) the earnings of the nut producers; (2) analysis of complainants' computations as to cost of service based on cost figures covering a period of two years ended June 30, 1914, and appearing in *Rates on Asphaltum, Barley, Beans, and Canned Goods, supra;* (3) controverted statements of fact; and (4) the proposed conclusions.

It is conceded by counsel for complainants that the returns to nut producers, whether high or low, afford no criterion for a determination of the issues in this case. And in ascertaining what would be reasonable and nonprejudicial rates to be applied to the movement of walnuts and almonds over the lines of the numerous defendants, estimates of the cost of moving other and dissimilar commodities over one line to a different destination, as a part of a through movement, during a period before outbreak of the war in Europe, are not particularly helpful. Accordingly it has seemed unnecessary to retain in the foregoing statement such portions of the examiner's proposed report as dealt in detail with these matters.

The exceptions to statements of fact need not be reviewed. A few unimportant changes have been made where appropriate. At the argument counsel for complainants said that in general the examiner's proposed report "states the facts with fair accuracy."

As stated above, defendants are eliminating departures from the aggregate of the intermediate provision of the fourth section. Complainants showed no instances where shipments to destinations in intermountain territory had been charged through rates in excess of the aggregate of the intermediate rates subject to the act. More than 90 per cent of their shipments are sold f. o. b. California. Upon consideration of the record we approve and adopt the foregoing statement of facts and the proposed conclusion that no reparation should be awarded.

In the exercise of powers conferred upon the President by the federal control act approved March 21, 1918, the Director General

of Railroads has by General Order No. 28, May 25, 1918, as amended intiated and directed the establishment on June 25, 1918, of rates exceeding those theretofore in effect, thereby fixing both the amount and the relation of the rates to be applied for the future on the traffic under consideration. The rates so initiated are not subject to review by us upon the present pleadings.

The complaint will be dismissed.

No. 9776.

JOHN P. WILSON

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted February 7, 1918. Decided July 10, 1918.

Complaint alleging that by demanding the payment of undercharges from complainant on a carload of peaches from Ridge Springs, S. C., to Philadelphia, Pa., after the net proceeds from the sale thereof had been remitted to the consignor, while rendering correct bills to other commission merchants prior to the remitting of such proceeds, defendants discriminated against complainant, dismissed.

Frank A. Chalmers and *Simpson, Brown & Williams*, for complainant.

Henry Wolf Biklé, for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND AITCHISON.

BY DIVISION 2:

The complaint alleges that defendants' demand upon him for the payment of undercharges due at the legally published rate on a carload of peaches shipped July 5, 1915, from Ridge Springs, S. C., to Philadelphia, after he had sold the peaches on commission and remitted the proceeds to the consignor, is discriminatory in favor of other commission merchants who received correct freight bills before remitting to the consignors. We are asked to order the defendants to cease demanding from complainant charges in excess of the amount named in the original freight bill. Rates are stated in cents per 100 pounds.

The shipment, consisting of 560 crates of peaches, moved over defendants' lines and was delivered to complainant, the consignee, July 7, 1915. On July 8, 1915, complainant having sold the peaches on commission, remitted to the consignor the proceeds less his commission and $213.81 for freight. The original freight bill was based upon an estimated weight of 25,200 pounds, "subject to correction," at a rate of 60.4 cents, $152.21, plus charges of $61.60 for refrigeration, and was paid by complainant on July 15, 1915. About July 20, 1915, a revised freight bill was presented to complainant which showed $240.35 as the correct charges, made up of $178.75, 23,520 pounds at the legal rate of 76 cents, plus refrigeration charges of $61.60. The correct rate was shown in the bill of lading, the original freight bill and the bill for undercharges. The undercharge of $26.54 is due from the party legally responsible therefor.

It appears that the purpose of this proceeding is to have the Commission determine whether or not the complainant is the party legally liable for the payment of the undercharges. The complainant contends that the act does not compel the collection of undercharges from the consignee, who had received the goods as agent for the consignor, after his relation as agent had ceased, and that the consignor, the true owner of the goods, alone is liable. The defendants contend that the act merely requires the carrier to collect the legal charges and does not alter the principles of law governing liability for the undercharges; that the consignee, having received the goods, without notice to the carrier of his agency, is legally liable; and that ownership of the property when transported does not determine the liability of the parties to the transportation record for the payment of freight charges. In our opinion this issue is not within our jurisdiction or within the scope of the act to regulate commerce. *Y. & M. V. R. R. Co.* v. *Zemurray*, 238 Fed., 789; *Conf. Ruling 314.*

An order dismissing the complaint will be entered.

No. 9707.

FORKED DEER MILLING COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 28, 1917. Decided July 10, 1918.

Rates on corn, in carloads, from certain points in Illinois, Iowa, Kentucky, and Tennessee, milled at Dyersburg, Tenn., and the products forwarded to various interstate points, not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

Claude W. Owen for complainant.

R. V. Fletcher and *L. W. Watson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

This complaint, seasonably filed, attacks the rates charged by defendants on numerous carloads of corn, shipped from various points in Illinois, Iowa, Kentucky, and Tennessee to Dyersburg, Tenn., there milled, and the products subsequently forwarded to points in Texas, Alabama, and Mississippi, between March 12, 1914, and September 30, 1915, as unreasonable and unduly prejudicial. Reparation is asked.

During the period of movement, except from May 28, 1914, to July 17, 1914, and at present, defendants' transit tariffs provided and provide for the cancellation on the first day of each month of original expense bills or other inbound tonnage records in excess of the amount of transit grain or grain products actually on hand. During the excepted period the tariffs provided for the daily cancellation of excess billing. The purpose of these tariff requirements was to prevent any mill having in its possession uncanceled tonnage records in excess of the amount of grain and grain products on hand. In the event of failure or refusal to observe these requirements, or in any particular to conform to the tariff rules, the tariffs provided that transit rights should be refused.

Complainant purchased a mill at Dyersburg in 1913. Early in 1914 an investigation by the Southern Weighing and Inspection Bureau, of which defendants are members, disclosed that the transit rules had not been complied with by complainant and that about $1,000 undercharges were due the carriers. A representative of that bu-

reau remained at the mill for six weeks and gave instructions to the manager concerning the tariff provisions governing transit, and an inspector of the bureau thereafter regularly visited the mill at intervals of from four to six months. In September, 1915, the bureau was informed by complainant's former manager that the transit account had been manipulated. It appeared that in some cases improper shrinkage allowances had been made in the monthly and daily reports; that these reports showed uncanceled inbound tonnage records representing grain and grain products largely in excess of the amount actually on hand; and that, in some instances, the mill had been operated in connection with a nontransit mill at the same place. Charges were originally assessed on the shipments at the joint through rates, plus the published transit charge. Subsequently, due to complainant's failure to comply with the tariff requirements governing transit service, charges were assessed at the local rates to and from Dyersburg, and on that basis undercharges aggregating $10,909.51 were collected.

No evidence was introduced to show that the rates assailed were unreasonable or unduly prejudicial. Complainant admits that it did not comply with the tariff requirements, but insists that this was due in part to the failure of the inspection bureau to call attention to the errors into which complainant had fallen. In this connection it is sufficient to state that the situation complained of was brought about by complainant's agent. The duty of the inspection bureau to police transit arises primarily from the obligation of the carriers to collect the legally published charges and not from any legal obligation to the shipper. It is the duty of shippers to aid the carriers in their effort properly and effectually to police transit service, but the facts of record in this case show that the necessary cooperation was withheld from the carriers.

We find that the rates assailed are not shown to have been unreasonable or unduly prejudicial, and an order dismissing the complaint will be entered.

No. 9292.

NORTHWESTERN TRAFFIC & SERVICE BUREAU
v.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY.

PORTION OF FOURTH SECTION APPLICATION No. 4654.

Submitted November 20, 1917. Decided, July 10, 1918.

1. Rates on coal, in carloads, from Manitowoc, Wis., to St. Paul and Minneapolis, Minn., found justified. Complaint dismissed.
2. Fourth section relief denied.

Stanley B. Houck for complainant.
Albert H. Lossow and *H. B. Ramsey* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

The complainant alleges that the rate of $1.35 per net ton on bituminous and anthracite coal, in carloads, from Manitowoc, Wis., to Minneapolis and St. Paul, Minn., hereinafter called the twin cities, is unreasonable to the extent that it exceeds $1.15 and unjustly discriminatory and unduly prejudicial in so far as it exceeds the rates contemporaneously in effect from Duluth, Minn., and other Lake Superior ports to the twin cities. The establishment of a reasonable rate is asked. Rates are stated in amounts per net ton.

Prior to 1909 defendant's lines extending to the twin cities from Manitowoc and Duluth and from Superior, Wis., were owned by the Wisconsin Central Railway Company. For some time prior to May 5, 1909, the rates on coal, in carloads, to the twin cities from Manitowoc and Duluth were 90 cents on bituminous coal and $1.25 on anthracite coal. Since that date the rates from Manitowoc have at various times been increased. On July 27, 1917, subsequently to the hearing in this case, the rate was increased to $1.50 following *The Fifteen Per Cent Case*, 45 I. C. C., 303. Between 1909 and the time this complaint was filed the rate on bituminous coal had been increased from 90 cents to 96 cents and the rate on anthracite coal reduced from $1.25 to $1.20 from Duluth to the twin cities.

Following *The Fifteen Per Cent Case, supra,* the rate on bituminous coal was increased to $1.11 and on anthracite coal to $1.35.

Coal from mines in Tennessee, West Virginia, and Ohio to the twin cities moves all-rail through Manitowoc and other gateways, and is sold in competition with dock coal from Duluth and Superior, moved to those points by rail and lake from the same mines. The rates on coal from these mines to Chicago, Ill., Milwaukee, Wis., and Manitowoc, when for points beyond, are the same, and range from $1.65 to $2.05. Complainant asserts that prior to the absorption by defendant of the Wisconsin Central its members handled coal in large volume from Manitowoc, and were able to compete with coal dealers shipping from Duluth, but that since that time, owing to the increased rates from Manitowoc to the twin cities, and on account of embargoes, they have gradually lost business through the Manitowoc gateway.

In justification of the rates assailed defendant's witness testified that beginning about 1900 there was a heavy rail-and-lake movement of flour, in box cars, from the twin cities to eastern points by way of Manitowoc. There was no tonnage of importance originating at Manitowoc for westbound movement and to secure a return load it was necessary that the Wisconsin Central equalize the rates on coal to Minneapolis from Manitowoc with rates on coal from Duluth, the lake rates from Lake Erie ports to Manitowoc at that time being practically the same as the rates to Duluth and other Lake Superior ports. The conditions which influenced the former low rates from Manitowoc have changed; the movement of flour eastbound through Manitowoc has greatly decreased; coal now moves more expeditiously to the twin cities from docks located at Superior and Ashland, Wis., points taking the Duluth rates, and less distant from the twin cities; there is at present no regular movement of dock coal from Manitowoc, but the coal moves all-rail from the mines by way of Manitowoc in foreign gondola equipment subject to per diem charges; and practically all of this equipment returns empty.

Defendant compares the rate assailed with rates of $1.60 on bituminous coal and $2 on anthracite coal from Chicago and Milwaukee to the twin cities, which rates have been increased since the hearing to $1.75 and $2.15, respectively. The total freight charges on bituminous coal from the mines, over defendant's line by way of Manitowoc, are lower than the charges by way of Milwaukee or Chicago.

Defendant contends that the rates assailed are lower than the general basis of rates on coal in western trunk line territory, and cites rates ranging from $1.40 to $2.08 on bituminous coal and from
[a1] 85 to $2.35 on anthracite coal from Milwaukee, Chicago, Manito-
and Duluth to points in Minnesota and Iowa, for distances

ranging from 314 to 321 miles. The class rates to the twin cities from Manitowoc are the same as the class rates from Chicago and Milwaukee. Manitowoc is 310 miles, and Duluth is 153 miles from St. Paul over defendant's line. The $1.50 rate from Manitowoc produces 4.84 mills per ton-mile. The $1.11 rate on bituminous coal from Duluth produces 7.2 mills per ton-mile and the $1.35 rate on anthracite coal from Duluth yields about 9 mills per ton-mile. It was stated for the defendant that the rates from Duluth to the twin cities were prescribed by the Minnesota railroad commission, effective May 15, 1914, and are known as the Cashman scale. By applying the Cashman scale from Manitowoc to the twin cities, the rates would be $1.57 on bituminous coal and $1.96 on anthracite coal.

We find that the defendant has justified the rates assailed, and the complaint will be dismissed. That portion of Fourth Section Application No. 4654, filed by the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, by which authority is sought to continue rates on coal from Manitowoc to the twin cities which are lower than the rates contemporaneously applicable on like traffic from or to intermediate points, was heard with this case. Defendant offered no evidence in justification of the fourth section departures, and the application will be denied to the extent that it is involved.

Appropriate orders will be entered.

No. 9239.

NATIONAL LIVE STOCK EXCHANGE
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 10, 1917. Decided June 5, 1918.

Charges of $2.50 for cleaning and disinfecting single-deck and $4 for double-deck live-stock cars, moving interstate, when required by federal, state, county, or municipal authority, or upon the request of shippers, found not to be unlawful and the amount of the charges are shown by defendants to be no more than reasonable. Complaint dismissed.

C. B. Heinemann for complainant.

Clifford Thorne for National Live Stock Shippers' Protective League and Corn Belt Meat Producers Association; *H. C. Lust* for Corporation Commission of New Mexico; *Ira B. Mills* for the Minnesota Railroad & Warehouse Commission; *A. E. Helm* for Public Utilities Commission of the State of Kansas; *Wayne Dinsmore* for National Society of Records Association; *Graddy Cary* for Henry Knight & Son; *Edward F. Keefer* for National Live Stock Shippers' Protective League, and State Live Stock Association of Illinois; and *S. H. Cowan* for National Live Stock Shippers' Protective League, Texas Live Stock Protective League, Cattle Raisers' Association of Texas, and Southern Cattlemen's Association, intervenors.

E. M. Hughes for the Chicago Live Stock Exchange and *Joseph H. Mercer* for Kansas Live Stock Association.

J. L. Coleman for western defendants and *D. P. Connell* for eastern defendants.

C. S. Burg for Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas; *William Burger* for Louisville & Nashville Railroad Company; *Robert H. Widdicombe* for Chicago & North Western Railway Company; *Fred H. Wood* for Southern Pacific Railway Company; *R. C. Fullbright* for Gulf Coast Lines; and *T. J. Norton* and *F. E. Andrews* for Atchison, Topeka & Santa Fe Railway Company.

Report of the Commission.

Division 2, Commissioners Clark, Daniels, and Woolley.

It is alleged in this complaint that defendants' charges for cleaning and disinfecting live-stock cars, in addition to rates for trans-

portation, subject shippers and receivers of live stock throughout the United States to the payment of charges which are unreasonable, in violation of section 1 of the act, and that such charges subject shippers of live stock to the payment of greater compensation for service rendered than is charged other shippers of carload freight under substantially similar circumstances and conditions, in violation of section 2 of the act. The Commission is asked to require defendants to cease and desist from the alleged violations of the act and to furnish, upon request, to all shippers of live stock throughout the United States safe and suitable live-stock cars, cleaned and disinfected as may be required by regulations of federal, state, county, or municipal authorities without imposing a charge therefor in addition to published rates for transportation.

The Board of Railroad Commissioners of the State of Iowa; State Corporation Commission of New Mexico; National Society of Records Associations; Railroad Commission of the State of Nevada; Corn Belt Meat Producers' Association; Henry Knight & Son; National Live Stock Shippers' Protective League; American Live Stock Association; and Minnesota Railroad & Warehouse Commission intervened.

Previous to the year 1915, except in the southern part of the country, hereinafter referred to, no charges were published by defendants for cleaning and disinfecting live-stock cars. In February, May, and June of that year charges of $2.50 for cleaning and disinfecting single-deck cars and of $4 for double-deck cars were published by the defendants and have since been maintained. The wording of defendants' schedules with respect to the service is not identical, but so far as the amount of the charges and the purpose for which they are made is concerned they are the same. It is sufficient here to show the provision of two schedules as illustrative. Southwestern Lines Committee schedule contains the following:

CLEANING AND DISINFECTING CARS.

The published tariff rates for the transportation of live stock do not include the expense for disinfecting cars made necessary by federal, state, county, or municipal regulations or orders of shippers.

When such regulations require cars which have been or are to be used in the transportation of live stock, to be cleaned and disinfected, or when shippers order cars disinfected, the following charges will be made for such service and will be assessed against the shipment on account of which such cleaning or disinfecting is performed:

For each single-deck car	$2.50
For each double-deck car	4.00

ing live-stock cars have been substantially the same as prior to the outbreak of the disease in the fall of 1914. No general infection of live stock has required that any substantial proportion of the cars of defendants shall be cleaned and disinfected. It is shown that the number of cars required to be cleaned and disinfected by reason of certain diseases specified in government regulations have decreased as compared with the years previous to 1914. For example, cleaning and disinfecting cars which have carried animals affected with what is known as "scabies" has practically ceased because of the eradication of the disease; there have been large sections of the country freed from cattle "ticks" by the efforts of the government, and these sections are no longer in prohibited territory; and the almost complete cessation of export movement of live stock has reduced the work of cleaning and disinfecting formerly required of carriers reaching the seaboard.

It is the practice of defendants to furnish clean live-stock cars when demand therefor is made by shippers. No charges are, or have been, made for the service. The cleaning process is materially different from that required when disinfecting is necessary. It consists merely in removing the refuse from the floor of the car with a pitchfork or shovel. It is frequently done by section men at the point of shipment upon order of the local agent. Shippers seldom demand a clean live-stock car. A certain amount of refuse in the car is desired by them as bedding. Some of the defendants clean their live-stock cars occasionally at their convenience. Some of the eastern carriers clean their cars every trip, but this is done, it is asserted by them, to meet competition at the Chicago market. One of the western carriers cleans its cars every trip if they are not in active demand. But cars can not be disinfected properly unless they are thoroughly cleaned; that is to say, disinfecting a car includes cleaning it in a manner satisfactory to a government inspector. A car cleaned for shipments of live stock is simply one from which the refuse has been removed from the floor space.

Copies of the report and orders of the Canadian Board of Railroad Commissioners in proceedings involving cleaning and disinfecting live-stock cars were submitted by complainant. They show that the Canadian board disallowed charges of $2.50 for single-deck and $4 for double-deck cars, published by carriers in Canada, and ordered that not to exceed 75 cents should be charged for the service of cleaning and disinfecting all cars. The complainant also submitted as an exhibit a copy of a report and order of the Public Utilities Commission of the State of Illinois. The order issued by the Illinois commission requires the defendants subject to its juris-

diction to charge not to exceed 75 cents for cleaning and disinfecting single-deck and $1.25 for double-deck cars. The order was appealed from by the defendants and is now pending in the state supreme court.

Complainant concedes that where shippers knowingly or willfully infect a car with a prohibited disease they should pay a reasonable charge for disinfecting only, but that such charge should not be made in case cattle are shipped from the "tick" zone, which always entails subsequent cleaning and disinfecting of the cars in which they were transported or in case of epidemics, where all cars are by order of national or state authority required to be cleaned and disinfected. It is the contention of complainant that in case of a general epidemic carriers should stand their share of the expense, as producers do when their herds are condemned or sacrificed at a fraction of their value.

Defendants assert that they disinfected cars without charge previous to May, 1915, when quarantine regulations were fewer, less widespread, and more easily complied with, and that so far as the foot-and-mouth disease is concerned there was not such an amount of cleaning and disinfecting as to be unduly burdensome until the epidemic beginning in 1914. It is argued by defendants that, although there was no separate charge for many years for cleaning and disinfecting cars in which had been transported cattle from the "tick" infested sections of the south, the question is not what has been done, but what should be done, and that an unjustifiable concession to shippers could not be found reasonable merely because it had been long continued.

It is contended by complainant that in the transportation of live stock, as with other freight, the carriers' unquestionable obligation to furnish safe and suitable cars is not fulfilled when a car that will merely confine the stock is furnished, for the car must be safe for the transportation of the stock, which should be protected from injury from any cause that might be reasonably anticipated, and that precautionary measures must be taken to prevent the exposure of live stock to infectious or contagious diseases.

Many of the rail carriers in the territory east of the Mississippi and south of the Ohio rivers, since early in the year 1911, have provided for charges when the services of cleaning and disinfecting live-stock cars is necessary under the requirements of the Department of Agriculture or because of federal, state, county, or municipal regulations. The question of the lawfulness of the charges was considered by the Commission in *New Orleans Live Stock Exchange* v. *L. & N. R. R. Co.*, 31 I. C. C., 609. The Commission found that

the published charge of $2.50 for cleaning and disinfecting a single-deck live-stock car had not been shown to be unreasonable or otherwise unlawful. At page 612 the Commission said:

> The carrier's tariff rates are presumed to provide reasonable charges for the service ordinarily or normally required and performed. If the shipper or receiver demands an additional service, the carrier has a right to assess a reasonable charge therefor. If because of the nature or condition of the shipper's freight the federal government or the state finds it necessary or appropriate to require extra precautions in connection with such shipments, which precautions impose upon the carrier an additional service, it is entitled to a reasonable compensation for that extra service. All such charges, in addition to being reasonable, must, of course, be free from unjust discrimination.

It is argued by complainant that the defendants by making a charge for cleaning and disinfecting a car in addition to the rate of transportation are requiring the shipper to pay for a service which is included in that rate; and that regulations requiring the adoption of certain measures of protection afford such protection to all shippers, and since the cleaning and disinfecting service was being performed without charge before the present high rates of transportation were published live-stock shippers are paying for the service in the rates.

In *Hammond, Standish & Co.* v. *M. C. R. R. Co.*, 42 I. C. C., 102, schedules of a number of carriers engaged in transporting live stock to Detroit, Mich., from various stockyards were under consideration. The schedules provided for charges of $2.50 for cleaning and disinfecting single-deck and $4 for double-deck cars, under similar circumstances and conditions to those here under consideration. The charges there considered became effective February 1, 1915. In that case the Commission found the charges for cleaning and disinfecting cars carrying interstate shipments of live stock to Detroit, Mich., in compliance with regulations issued by the United States Department of Agriculture to prevent the spread of contagious, infectious, or communicable diseases, were lawful, and that the published charges were reasonable. At page 103, the Commission said:

> The complainants attack the tariffs as unlawful on the theory that the cost of the disinfecting service is already included in the transportation rate. It is contended that carriers of live stock are under obligation to furnish clean cars and that the cost of any service necessary for this purpose is included in the transportation rate. It appears that prior to the regulations and tariffs here under consideration certain southern cattle cars and cars containing shipments of hogs were cleaned and disinfected at Detroit under federal regulations without extra charge, and this fact is relied on as tending to support complainant's contention.

* * * We do not think the fact that a similar service had been for a time performed without charge, with respect to southern cattle cars and cars containing shipments of hogs, is of particular value as tending to prove that the cost of the service now required is already provided for in the transportation rate. Formerly the service was not so extensive as under the orders and regulations covering the foot-and-mouth disease, which embraced in quarantine a very large part of the middle western territory. The fact that a similar service was for a time performed to a limited extent and without extra charge furnishes no good reason why a proper charge may not be imposed when the nature or condition of the shipment makes the service necessary.

On brief the defendants contend that the Commission having found in the two cases above referred to that charges for disinfecting should be borne by shippers of live stock, there remains for disposition in this proceeding the question whether the published charges for the service are reasonable.

The defendants submitted evidence and exhibits showing the results of tests to determine the cost of cleaning and disinfecting live-stock cars at the principal markets of the country. In making the tests substantially the same methods were used by each of the defendants submitting evidence. The cost of labor, materials, etc., was divided into principal items, and actual tests were made and records kept of the cost of each item. The items are as follows:

1. Cost of labor—cleaning.
2. Cost of labor—disinfecting.
3. Cost of material—disinfecting.
4. Cost of tools—cleaning and disinfecting.
5. Cost of extra engine service.
6. Cost of per diem—car detention.
7. Cost of destroying refuse.
8. Cost of other items.

The actual time of the men engaged in the work under the different items was determined from time books or by putting separate gangs of men to work on lots of cars; cost of materials used in disinfecting was determined with respect to each car; the additional switching required because of the extra service was fixed by actual movements; the proportionate cost of tools and appliances used in service were determined as nearly as possible; and the cost for detention of cars and the other items was ascertained from records. The per diem charges were either 75 cents or 45 cents per day, as during most of the time the records were kept the charges were 45 cents per day for reciprocal car detention, and for the remainder 75 cents.

It is not necessary to set out the exhibits of each defendant in detail. It will suffice to give a summary of them submitted by defendants on brief, as follows:

Carrier.	Place.	Date of test.	Single-deck cost.	Double-deck cost.
A., T. & S. F. Ry. Co.	Chicago	Dec. 1 to Dec. 28, 1915	$2.52	$3.68
	Kansas City	July 1 to Dec. 31, 1916	[1] 2.97	
	Denver	do	[1] 2.88	
	Wichita	do	3.12	
	Oklahoma City	do	3.61	
C. & N. W. Ry. Co.	Cleburne	July, 1915, to June, 1916	2.81	2.934
	West Chicago	Dec. 1 to Dec. 15, 1915	2.70	3.93
C., M. & St. P. Ry. Co.	Chicago	Nov. 28 to Dec. 28, 1915	2.41	3.84
	Savannah	Dec. 1 to Dec. 6, 1915	2.78	4.12
Illinois Central	Chicago: Wildwood	January, February, June, November, 1915.	3.67	
	Hawthorne yard	do	2.48	
	East St. Louis	do	3.02	
	Canton, Miss	do	6.22	
Northern Pacific	St. Paul	January and March, 1916	2.39	
C., B. & Q. R. R. Co.	Galesburg, Ill	January, 1916	2.46	2.90
	Eola, Ill	do	2.75	4.16
	South Omaha	July 1, 1916, to Mar. 1, 1917	6.35	7.04
	Wymore, Nebr		4.93	
	Alliance, Nebr		3.25	
	Montgomery, Ill		6.46	9.35
Wabash	East St. Louis, Ill	February, April, July, November, 1916.	2.45	2.95
	St. Louis, Mo	do	2.57	3.36
Union Pacific	South Omaha, Nebr	11 months of 1915	2.65	3.80
	Kansas City, Mo		2.65	
M., K. & T. Ry. Co.	Parsons, Kans	Apr. 1 to 15, 1917	[1] 3.19	
L. & N. R. R.	Louisville, Ky		3.34	4.78
B. & O. S. W. Ry.	Cincinnati, Ohio	April, July, November, 1916	2.65	
		February, 1916	3.05	
Pennsylvania lines	Terre Haute	February, April, July, November, 1916.	3.21	4.70
C., C., C. & St. L. Ry.	Lindale, Ohio	November, 1916	4.28	4.68
N. Y. C. lines	Karner, N. Y	Nov. 15, 1914, to Feb. 29, 1915	5.06	8.07
		Mar. 1, 1915, to May, 28, 1915	3.91	5.77
	Elkhart, Ind	July and August, 1915	2.64	3.25
		November and December, 1914	3.99	5.57

[1] Per diem, at 75 cents.

The defendants assert that at the time most of the tests were made in 1915 the cost of materials and labor was much lower than during the year 1916 and up to the date of the hearing.

In determining the cost per hour of operating a switch engine items of repairs, interest, depreciation, insurance and taxes, wages paid to the crew, fuel, water, lubrication, other supplies, roundhouse expenses, the proportion of yardmasters and clerks, yard switch and signal tenders, yard supplies and expenses of supervision, and the proper proportion of claims and damages were considered. For example, the Illinois Central on the basis stated computed the cost of operating a switch engine per hour to be about $5. This basis was used by each of the defendants in fixing the cost of the extra engine service.

Complainant's witnesses testify that the labor necessary to clean and disinfect the ordinary car can be done in a few minutes, and that the cost of disinfecting material should not exceed 23 cents per car. No actual test of all items of expense was made by complainant. The witnesses testified from observation while the work was being done. Reference was also made to the fact that when the defendants

contracted for the service it was done at rates much lower than those given.

Complainant insists that little credence should be given to the cost figures presented by the defendants. It is shown by complainant that most of the tests were made in the winter months when the cost of cleaning and disinfecting is materially greater than in the warmer months because of the frozen condition of the refuse and the necessity for heating the disinfecting material before application. It is also shown that the marked variance between the total cost, for example, at Canton, Miss., and Montgomery, Ill., as compared with that at Chicago and Galesburg, Ill., is unaccounted for.

The defendants insist that the differences in the various items and the total cost is one proof of the credibility of the figures; that the conditions under which the carriers work differ; and that the figures show with reasonable accuracy what it costs the carriers to perform the service at representative places in the country where the work must be done, and where the cost of labor and materials are different.

Each item of cost is considered and discussed in detail by complainant on brief. No good purpose would be served by taking these up separately. It is enough to state that complainant concludes that all the cost figures have been grossly overstated. For example, complainant analyzes the car detention items and shows that the charges range from 45 cents to $3.30. Complainant previous to the hearing requested defendants to furnish detailed information as to the live-stock car detention, but no such information was furnished. It is insisted that the question of car detention can only be settled by consideration of car performance, and since the defendants refused access to that information, argument must be made from disclosed facts, which show that no increase of live-stock equipment was necessary to enable the defendants to handle the greatest volume of live-stock shipments in the country's history during the year 1916. Some of the lines show fewer stock cars in operation and some more, but as a whole the supply is practically stationary; and there is no tenable ground for defendants to charge per diem when their cars were earning more revenue than ever before. On the other hand, it is insisted by defendants that the detention charges are exceedingly low and favorable to the shippers, since they by no means represent the value of the use of the car.

Complainant also insists that no attention need be paid to "item No. 8" in the cost tests of defendants which is alleged to include "other items" because every conceivable item that may properly be considered is included in items 1 to 7. The complainant has examined all the cost exhibits submitted by defendants and ascertained from them the minimum cost of the service as follows, not including items 6 and 8:

Item.	Cents.	Carrier.
1	24	B. & O. S. W., at Cincinnati, Ohio.
2	6	I. C. R. R., at East St. Louis, Ill.
3	7	C. M. & St. P., at Chicago, Ill.
4	1.1	N. Y. C., at Karner, N. Y.
5	15.3	C., B. & Q., at Eola, Ill.
6	00	Not properly chargeable.
7	1.2	N. Y. C., at Elkhart, Ind.
8	00	Not properly chargeable.
Total	54.6	

It is contended by complainant that the actual cost may properly be presumed to never exceed the minimum figure thus ascertained, and that it is not unreasonable to insist that this small amount shall be included in the rates of transportation, as had been the case previous to the year 1915.

It seems highly proper to include car detention as one of the items of cost to defendants when such detention is due to the service. Cars are frequently detained on account of failure of inspectors to appear and approve the work of cleaning and disinfecting. Item No. 8 should also be included because it contains items of cost for maintenance of tracks exclusively used in cleaning and disinfecting cars, and it also contains a proportionate share of the expense of building the tracks. Had these items been included by complainant the minimum cost would exceed $1.05 per single-deck car.

The figures presented by the defendants are properly open to objection in many respects. Not all the charges for switching, etc., are properly assignable to the service of cleaning and disinfecting. Neither is it proper to compute the charges on the basis of the service rendered during the winter months only. However, a liberal discount may be made from most of the cost estimates submitted by defendants, and on the average they will still be found to equal or exceed the published charges.

Complainant contends that whenever necessary, or when requested, cleaned cars are furnished to carload shippers of other commodities than live stock, and that it is unjust discrimination against shippers of live stock to require them to pay for the service of cleaning cars. Other commodities for which carriers furnish cleaned cars without extra charge are stated to be cheese, dressed poultry, and various perishable commodities, the character of which require that cars shall be cleaned before being used for other shipments. The question of discrimination thus presented is not here for determination. The defendants concede that it is their duty to furnish a clean live-stock car upon request of a shipper, and that they will furnish such a car without charge. A cleaned and disinfected car, under regulations of federal or state governments, is a different matter. Shippers do

not demand that a live-stock car shall be scrubbed and washed clean before being tendered to them for shipments of live animals. The exigencies of the business do not require such a cleaning process. It is only when regulations designed to benefit the entire public in preventing the spread of communicable diseases require disinfecting, which includes thorough cleaning, that the charges here complained of are made.

WOOLLEY, *Commissioner:*

This case was argued upon the foregoing statement of facts and a proposal by the examiner who heard the case that the complaint be dismissed upon the ground that the charges published by the defendants for cleaning and disinfecting, when the service is required by federal, state, county, or municipal regulations, or is requested by shippers, are not shown to be unlawful and that the defendants have shown that the amount thereof is no more than reasonable for the service rendered.

At the argument counsel for the National Live Stock Shippers' Protective League and other associations filed a motion that the proposed findings be limited to charges for cleaning and disinfecting cars when used for the transportation of diseased cattle, and that the case be reopened and set for further hearing with reference to such charges when the cattle transported are not diseased but originate in the "tick-infected territory of the south." It is contended that charges for cleaning and disinfecting cars used in the latter traffic should be dealt with separately. The so-called Texas or splenetic fever, against which it is desired to protect northern cattle, is not infectious and is communicable only through a certain variety of cattle tick. Southern cattle are immune to the infection, but the northern cattle are not.

Counsel pointed out that there is no requirement to clean and disinfect unless the shipment is destined to a point north of tick-infected territory, and that a car may be used within that territory with only such cleaning as is customary in ordinary cattle traffic when there is no disease to be guarded against; therefore that on a shipment from a southern point to a point north of tick territory it is unfair to charge the shipper, who probably receives a car in which the tick is already present, with the full cost of cleaning and disinfecting. It is further pointed out that in the case of a shipment from one non-infected territory to another which moves through infected territory the cost of cleaning and disinfecting is borne by the shipper, although he is in no way responsible for the infection. When under the law carriers are required to perform an additional service in connection with traffic of a particular description or between speci-

fied territories they should be reasonably compensated therefor; and it would not appear to us practicable, or fair to the carriers, to distinguish between disinfecting required because the cattle are themselves diseased and that required because the cattle originate in, or necessarily pass through, tick territory and carry the means of infecting other cattle with a disease. The carriers perform the same service in either case, and should have the same compensation, and the reasons advanced do not in our opinion justify a further hearing.

The burden of the exceptions to the proposed report is that the cost figures submitted by the defendants are not properly analyzed. About twenty carriers submitted such figures and it was impracticable to discuss them in detail. The figures are based on estimates made in 1915, and it was stated by the defendants, and admitted by the complainants, that costs in 1917 were materially greater. It is true that but little cleaning and disinfecting is now being done, but the service is substantially the same as when the hoof-and-mouth disease was prevalent and is relatively more expensive because obviously it costs more per car to perform it on one or two cars than on a train of cars. The Commission has twice found $4 for a double and $2.50 for a single-deck car to be reasonable; and in our opinion the evidence in this case clearly justifies the same conclusion.

Our examination of the record confirms the facts as stated in the proposed report, and warrants and requires the finding proposed. We therefore find and conclude that the complaint has not been sustained and must be dismissed. It will be so ordered.

No. 9507 (Sub-No. 1).[1]

SPRINGSTON LUMBER COMPANY ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted May 11, 1918. Decided July 10, 1918.

1. Combination rates for the transportation of pine and fir lumber from Harrison, Springston, and Rose Lake, Idaho, to points local to the line of the Northern Pacific Railway Company, east of Billings, Mont., in the states of Montana, North Dakota, and Minnesota, found to be unduly prejudicial.
2. Through routes and joint rates should be established, the latter not to exceed, from the three points of origin to Minneapolis, Minn., the rates contemporaneously maintained from Spokane to the same point of destination, graded westwardly therefrom so as not to exceed 2 cents per 100 pounds above the rate contemporaneously maintained from Spokane to Beach, N. Dak., at the latter point.
3. Rates from the three points of origin to Beach should be maintained as maxima to points between Billings and Beach.

R. J. Knott for complainants.

Charles Donnelly, *J. W. Quick*, *B. W. Scandrett*, and *S. J. Henry* for Northern Pacific Railway Company; and *Thomas Balmer* for Great Northern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

Joint through rates for the transportation of fir and pine lumber do not apply from Springston, Harrison, and Rose Lake, Idaho, points local to the line of the Oregon-Washington Railway & Navigation Company, herein called the Oregon-Washington, to points in the states of Montana, North Dakota, and Minnesota, east of Billings, Mont., local to the line of the Northern Pacific Railway Company, herein called the defendant. Complainant alleges that the aggregate rates of the two carriers are unreasonable and unduly prejudicial to the undue preference of points in the Spokane, Wash., lumber group. We are asked to establish for the future, from the three points of origin, where complainants operate lumber mills, to the destination points, rates which shall not exceed those contemporaneously maintained from Spokane to the same points.

[1] This report also embraces No. 9507, Springston Lumber Co. et al *v.* Great Northern Railway Company et al.

The complaints filed in these cases are broader in scope than the above statement. However, by the satisfaction of one of the complaints and the abandonment of certain allegations of the other, the issue is as stated.

Joint rates, the same as those in effect from the Spokane group to the same territory, now apply via Spokane from the three points of origin to Minot, N. Dak., and points east thereof upon the line of the Great Northern Railway Company. At the hearing that company agreed these rates should be made applicable to points directly intermediate to Minot, which adjustment of the original complaint is satisfactory to the complainant. An order dismissing it will be entered upon notification to the Commission that the agreed basis has become effective.

The origin points are located on a branch of the Oregon-Washington, extending from Tekoa, Wash., near the Washington-Idaho state line, to Burke, Idaho. Defendant has a branch, connecting at Wallace, Idaho, with that branch of the Oregon-Washington, thence to St. Regis, Mont., on its Coeur d'Alene line. Eleven miles west of Wallace, from which Spokane group rates apply, is Kellogg-Wardner, Idaho, a station on the line of the Oregon-Washington from which Spokane group rates apply. Lumber was not produced at either of these stations at the time of the hearing, but a mill, to produce lumber not competitive with that manufactured by complainants, was then building. The tariffs of the defendant, however, in view of a reciprocal switching arrangement which obtains in the Coeur d'Alene mining district between the Oregon-Washington and the defendant, provide Spokane group rates to the east from Kellogg-Wardner as well as Wallace. Springston, Harrison, and Rose Lake are, respectively, 46.3, 49.7, and 30.9 miles, or an average distance of 42.3 miles, west of Wallace, and, respectively, 83.1, 79.7, and 98.5 miles, or an average of 87.1 miles, southeast of Spokane. The local rates of the Oregon-Washington from Springston and Harrison to Wallace are 7 cents per 100 pounds; to Spokane and Kellogg-Wardner, 6 cents per 100 pounds; those from Rose Lake to Kellogg-Wardner, Wallace, and Spokane are, respectively, 4, 6, and 7 cents per 100 pounds. The lowest combinations therefore are: From Rose Lake, 4 cents, and from Springston and Harrison, 6 cents per 100 pounds above the Spokane group rates.

The principal competition of complainants in Montana, North Dakota, and Minnesota is from the Spokane group mills. Complainants are debarred by the differentials against them from selling lumber to local points on the line of the defendant.

The lumber rates from Spokane were established by the Commission in *Oregon & Washington Lumber Mfrs. Asso.* v. *U. P. R. R. Co.*, 14 I. C. C., 1, and associated cases. The Spokane group rate

applicable to the transportation of fir and pine lumber to destinations on the line of the defendant grade upward, so far as the purposes of this case are concerned, from Billings to Minneapolis, Minn. For example, the following rates, stated in cents per 100 pounds, are illustrative: Miles City and Glendive, Mont., 33; Mandan, N. Dak., 35; Bismarck, N. Dak., 36; Jamestown and Fargo, N. Dak., 37; Moorhead, Minn., 37; Detroit, Minn., 41; stations Frazee to Minneapolis, 42. The 42-cent rate to Minneapolis for a distance of 1,486 miles yields about 5.65 mills per ton-mile.

West of the points of origin the Spokane group rate applies from Spokane and Ione, Wash.; south of them, from Craig Junction and Kamiah, Idaho; north of them, from Hope, Idaho; east of them, from Kellogg-Wardner. The first station, east of Billings, on the line of the defendant to which transcontinental lumber rates are named on the Spokane group basis is Beach, N. Dak., distant, respectively, 795, 883, and 1,067 miles from Rose Lake, Spokane, and Kamiah. The rate on pine and fir lumber from Spokane to Beach is 33 cents per 100 pounds, earning 7.5 mills per ton-mile. Were that rate extended from Rose Lake, via Wallace, to Beach, the ton-mile earnings would be 8.35 mills; via Spokane, 6.73 mills. The rate fixed to Beach would apply as maximum to points west thereof and east of Billings.

The difficulties encountered in the operation of the Wallace-St. Regis branch of the defendant were detailed on behalf of the defendant and it was asserted that it would be less expensive to transport the traffic via Spokane and thence over the main line of the defendant than to receive the traffic at Wallace for movement to and through St. Regis. But it is immaterial to the complainants via what junction point the joint rates apply. The joint rates from Wallace, involving the branch-line haul, are now on the Spokane group basis.

In *Eastern Oregon Lumber Producers' Asso.* v. *R. R. Co.*, 39 I. C. C., 316, combination rates on lumber and articles taking lumber rates from eastern Oregon producing points on the line of the Oregon-Washington to points on the line of the defendant and the Great Northern Railway, and their connections in the states of Montana, North Dakota, South Dakota, Minnesota, and Nebraska, were found to be unreasonable and unduly prejudicial. Joint rates, not to exceed the rates contemporaneously maintained from Spokane by more than amounts ranging from 5½ cents, on shipments to points west of the Montana-Dakota state line, to 2 cents on shipments to Minneapolis and St. Paul, Minn., were prescribed for the future. The mills in eastern Oregon are about 340 miles south of Spokane and it was shown that the Spokane group rate applied from points on the line of defendant 160 miles west of Spokane.

Joint rates, on the Spokane group basis, apply from the origin points to destinations on the lines of other transcontinental carriers serving the same destination territory, but such rates do not permit the complainants to serve local points on the line of the defendant. Defendant asserts that the participation of these lines in joint rates with the Oregon-Washington is reciprocal in that those lines are parties to joint westbound class and commodity rates to the territory served by the Oregon-Washington. It is testified that the defendant does not participate in such joint rates, but our examination of the tariffs indicates that this statement is not wholly correct, although it is true that the joint rates westbound do not apply to the three points of origin here involved. See Countiss's I. C. C., No. 1049. However, each rate situation must be determined on its own merits.

Joint rates on the Spokane basis apply from mills on the line of the defendant in this originating territory to eastern destinations on the line of the Union Pacific Railroad Company, and complainant contends that the defendant should reciprocate by establishing joint rates from points on the line of the Oregon-Washington, a subsidiary of the Union Pacific Railroad, to points on the line of the Northern Pacific. Defendant insists it should not be compelled to establish joint rates on any basis which would compel it to divide the Spokane group rate with the Oregon-Washington. In this connection we are referred to *Betcher Lumber Co.* v. *C., M. & St. P. Ry. Co.*, 26 I. C. C., 335, in which we refused to accede to the prayer of the complaint to reduce the rates on lumber from Grants Pass and Glendale, Oreg., to Red Wing, Minn., to 51 cents per 100 pounds, because it would compel the defendant to accept as its proportion, from Portland, Oreg., materially less than we held to be a just rate from that point to Minnesota Transfer, Minn. In that case a combination of rates of 60 cents per 100 pounds was found to be unreasonable and a joint rate of 55 cents was prescribed, applicable, however, via Council Bluffs and not via Minnesota Transfer. Although defendant shows that it is now compelled to haul empty cars westbound to accommodate traffic eastbound and contends that if joint rates on lumber are established from the origin points it would be compelled to increase its empty haul westbound to supply cars for traffic originating at complainants' mills, a fair conclusion from this and other evidence submitted on behalf of defendant is not that through routes and joint rates should not be established, but that the joint rates to be made should be differentially higher than those applicable from the Spokane group. In this connection we are referred by defendant to the *Eastern Oregon Lumber Producers' Association Case*, *supra*, *Rawson-Works Lumber Co.* v. *N. P. Ry. Co.*, 42 I. C. C., 303, in which a rate 3½ cents above the Spokane group rate was established from

Kamiah, 184 miles south of Spokane through Silver Bow, Mont., to Salt Lake City, Utah; and *Sand Point Lumber & Pole Co.* v. *G. N. Ry. Co.*, 43 I. C. C., 59, in which, following the *Eastern Oregon Lumber Producers' Association Case, supra*, we found that the rate charged on a carload of lumber from Springston to Antelope, Mont., was unreasonable to the extent it exceeded by more than 2 cents per 100 pounds the rate contemporaneously maintained from Spokane. Antelope is in northeastern Montana on the Plentywood branch of the Great Northern Railway, about 848 miles from Spokane. The distance from the origin points, via Wallace, to Beach is about 812 miles.

It is recommended that the Commission find, following *Eastern Oregon Lumber Producers' Association Case, supra*, and *Sand Point Lumber & Pole Co., supra*, that the present rates for the transportation of pine and fir lumber from Harrison, Springston, and Rose Lake, Idaho, to local points on the line of the defendant, east of Billings, Mont., in the states of Montana, North Dakota, and Minnesota, are unduly prejudicial and that defendants should be required to establish from those points to Minneapolis, Minn., through routes and joint rates not to exceed those contemporaneously maintained from Spokane, Wash., to Minneapolis, graded westwardly therefrom to a differential of not more than 2 cents per 100 pounds at Beach, N. Dak., above the Spokane rate to Beach, which rate shall apply as maximum to points directly intermediate between Billings, Mont., and Beach.

DANIELS, *Chairman:*

The foregoing report substantially as printed above was submitted to the parties, and briefs containing exceptions were submitted by the complainants and the initial defendant. We have stricken from the report the proposed finding of unreasonableness. The rates were not increased since January 1, 1910, and the complainants have not sustained the burden of showing them unreasonable. The proposed finding of undue prejudice is sustained upon the facts shown of record, and the report as printed above is approved and adopted by the Commission. We shall not at this time enter an order, leaving the proper correction to await disposition until after lumber rates from the points of origin, filed in accordance with General Order No. 28, shall have been brought to our attention.

No. 8743.

ANDERSON-THEOBALD COMPANY
v.
VANDALIA RAILROAD COMPANY ET AL.

Submitted May 10, 1918. Decided June 27, 1918.

Former finding that the rates on sand and gravel, in carloads, from Allison Branch, Ill., to certain points in Indiana were unreasonable reversed on rehearing. Complaint dismissed.

James H. Swango for complainant.

C. B. Sudborough for Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report herein, 46 I. C. C. 412, we found that the defendants' rates on sand and gravel, in carloads, from Allison Branch, Ill., to certain points in Indiana on the Vincennes division of the Vandalia Railroad, now a part of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, to which the rates had been increased since January 1, 1910, were not justified, and to certain other points to which the rates had not been so increased, unreasonable, and prescribed for the future reasonable maximum rates which were the same as the intrastate rates then in effect on like traffic from Emison, Ind., to the same destinations. To certain other near-by Indiana points referred to in the complaint the rates were the same from Allison Branch as from Emison, but they were not condemned and are still in effect. Subsequently to the original hearing the intrastate rates from Emison were increased by 5 to 10 cents per net ton under authority granted by the Public Service Commission of Indiana, so that the present rates from Emison to the Indiana points are higher than the rates formerly in effect from Allison Branch to the same destinations.

On November 13, 1917, this case was reopened at the request of the defendants. The contention formerly made for defendants that the rates from Emison were unduly low was reiterated; also that the record as then made did not warrant a finding that the rates assailed were unreasonable *per se*. Additional evidence was offered in support of the latter contention.

The complainant states that the gist of its contention was and is that the rates from Allison Branch and Emison to the destinations mentioned should be upon a parity; that the complaint was in reality founded upon the alleged undue prejudice formerly existing against Allison Branch; and that as the alleged discrimination has been removed, it withdraws its allegation attacking the level of the then existing rates.

Upon the record now before us we find that the rates assailed are not shown to be unreasonable, and our former order will be vacated and the complaint dismissed.

An appropriate order will be entered.

No. 7205.

SWIFT & COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted March 23, 1918. Decided June 27, 1918.

Amount of reparation due under original findings determined and order entered.

R. D. Rynder for complainant.

H. G. Herbel and *F. B. Clark* for St. Louis, Iron Mountain & Southern Railway Company.

F. W. Main for Chicago, Rock Island & Pacific Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original decision herein, unreported, we found that defendants' joint rates of 63¼ and 58¼ cents per 100 pounds on green salted hides, in carloads, from Fort Worth, Tex., to Durbin and Marlinton, W. Va., respectively, were unreasonable to the extent that they exceeded 60¼ cents and 55¼ cents, respectively, the aggregate of the intermediate rates contemporaneously in effect to and from Louisville, Ky., and that complainant was entitled to reparation on that basis on certain shipments enumerated in the complaint. In accordance with the usual practice complainant was directed to file a detailed statement, verified by defendants, showing the amount of reparation due

under our findings. Complainant accordingly prepared such a statement covering 35 shipments on which reparation is claimed. The correctness of that statement as to certain of the shipments was duly certified by defendants, but as to the remainder complainant was unable to obtain the proper certification and a further hearing was held to determine the amount of reparation due.

The 35 shipments moved by way of Louisville. Of these 21 moved to Durbin and 1 to Marlinton, by way of the Texas & Pacific Railway, the St. Louis, Iron Mountain & Southern Railway, now the Missouri Pacific Railroad, the Southern Railway, and the Chesapeake & Ohio Railway. On 20 of these shipments charges were collected in the sum of $6,899.51, on an aggregate weight of 1,090,831 pounds at the 63¼-cent rate; and on the other two shipments charges were collected in the sum of $615.98 on an aggregate weight of 105,748 pounds at the 58¼-cent rate. The remaining 13 shipments moved to Marlinton by way of the Chicago, Rock Island & Gulf Railway, the Chicago, Rock Island & Pacific Railway, the Louisville & Nashville Railroad, and the Chesapeake & Ohio Railway and charges were collected in the sum of $4,223.04, on an aggregate weight of 667,682 pounds at the 63¼-cent rate.

We find that complainant, a corporation, made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable; and that it is entitled to reparation from the Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, Southern Railway Company, and Chesapeake & Ohio Railway Company in the sum of $358.97, with interest, and from the Chicago, Rock Island & Gulf Railway Company, Chicago, Rock Island & Pacific Railway Company, Louisville & Nashville Railroad Company, and Chesapeake & Ohio Railway Company in the sum of $200.26, with interest.

An appropriate order will be entered.

LEGALITY OF EXPRESS FRANKS.

No. 4662.

IN THE MATTER OF THE ISSUANCE AND USE OF PASSES, FRANKS, AND FREE PASSENGER SERVICE.

Submitted January 14, 1918. Decided July 15, 1918.

1. The free transportation of property upon franks issued by express companies to their officers and employees or to the officers and employees of other common carriers in exchange for passes or franks of such common carriers held to be unlawful.
2. The principle announced on July 20, 1917, in *Conference Ruling 513* reaffirmed.

Charles W. Stockton and *Branch P. Kerfoot* for Wells Fargo & Company.

T. B. Harrison for Adams Express Company and American Express Company.

Robert C. Alston for Southern Express Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

Does the interstate commerce law prohibit express companies from giving free transportation of personal packages to their officers and employees, and to the officers and employees of other transportation companies in exchange for passes issued by the latter to the officers and employees of the express companies? This was the question, as stated by the court itself, that was considered in *American Express Co.* v. *U. S.*, 212 U. S., 522, decided in 1909. The conclusion of the court was summarized as follows (id., pp. 533, 534, 535):

> If it is lawful, in view of the provisions of the interstate commerce act, to issue franks of the character under consideration in this case, then this right must be founded upon some exception incorporated in the act, and it is the contention of the learned counsel for the appellant that such exception is found in the proviso in section 1 of the Hepburn act. * * *
>
> Turning to section 1 of the Hepburn act, it is apparent that all that immediately precedes the proviso appertains to the carriage of passengers, for common carriers are forbidden to issue or give any free ticket, free pass, or free transportation for passengers, except to its employees, etc. Until we come to the proviso, the act is clearly thus limited. It is then enacted that this provision; that is, the previous part of the enactment which refers only to the transportation of passengers, shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families, or to prohibit any common carrier from carrying passengers free in certain cases.

* * * We are clearly of the opinion that, without doing violence to the language used in section 1—including the proviso—its terms can not be held to include the transportation of goods.

That part of section 1 of the act to regulate commerce as amended,[1] which was thus construed as authorizing the free transportation of persons only and not including the free carriage of goods, has not been changed since the decision in that case was announced. Prior to that date the express companies, more or less generally, had been issuing franks for the carriage of property to their own officers and employees and had been issuing franks to the officers and employees of railroads in exchange for passes. After the announcement of the decision the practice of issuing franks either to their own officers and employees or to the officers and employees of other common carriers was discontinued.

By an amendment to section 1, enacted in 1910, telephone, telegraph, and cable companies, now commonly referred to as transmission companies, were brought within the scope of the act. At the same time and as a part of the same amendment there was added to the so-called antipass provision of section 1 the following proviso:

And provided further, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof, with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees, and their families of other common carriers subject to the provisions of this act.

Shortly after this proviso had been incorporated into section 1 of the act the express companies resumed the practice of issuing franks not only to their own officers and employees, but also to the officers and employees of other common carriers. In the official gazette of one of the companies it was formally announced that the effect of

[1] The language of the provision in question, omitting portions that are not pertinent, is as follows:

No common carrier subject to the provisions of this act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

the proviso was to permit the practice. Its resumption, however, did not come to the attention of the Commission in any formal and definite way until 1917, and, the legality of the practice having been the subject of inquiry, on July 20 Conference Ruling 513 was announced, as follows:

513. EXPRESS COMPANIES MAY NOT CARRY PROPERTY FOR OFFICERS AND EMPLOYEES EXCEPT AT PUBLISHED RATE.—Upon inquiry, *Held*, That the act to regulate commerce as amended does not authorize an express company subject to the act to carry property either for its own officers or employees or for the officers and employees of other common carriers, except at its legally published rate.

Subsequently the attorneys for the various express companies asked for and were granted a hearing on the question.

From the investigations made by the Commission and the facts as stated of record, it appears that the express companies have been issuing two classes of franks, namely, annual franks and paster franks. Annual franks are issued to the officers of the issuing and other express companies, to the principal officers of railroad companies, and occasionally to the officers of other common carriers subject to the act to regulate commerce as amended. The annual franks are issued in two forms, one limiting the weight of shipments thereunder to 150 pounds, and the other without limitation as to weight. Neither form, however, is intended to cover shipments of extra heavy weight, or of unusual size or quantity, or to cover money, bonds, jewelry, live stock, or consignments for sale or profit. Paster franks are issued to minor employees of the issuing or other express companies, and to employees of railway companies. They cover transportation by express between designated points of shipments, not exceeding the weights specified thereon, by or to the person named on the frank. These franks are affixed to the shipment for which they are issued and are subject to the general restrictions that apply to annual franks. Apparently the use of all classes of franks is more or less carefully policed.

On behalf of the four principal express companies it is pointed out, as heretofore stated, that prior to the decision in 1909 by the Supreme Court of the United States in the case above cited, and since the amendatory legislation of 1910, the details of which have been explained, "it has been the general and continuous practice of all express companies thus to issue their franks." It is said that in most instances franks have been issued in exchange for passes on lines of railroads over which the issuing express companies do not operate and over which officers and agents could not otherwise travel without the payment of large sums as railroad fares. It is also said that the franks issued to the employees of the issuing companies are useful in developing the loyalty of the employees to whom they are

issued, and that those issued to employees of the railroads over which the issuing express company operates are very beneficial in procuring and assuring cooperation between the employees of the express companies and the employees of the railroad. It is also stated that this cooperation adds materially to the proper and efficient service for the public by the express companies.

Although these considerations may have the importance attributed to them by the express companies, they are of little aid in construing an act of the Congress. This general thought finds expression in *American Express Co.* v. *U. S.*, *supra*, where it is said (p. 535):

> It is very likely that there is no substantial reason why Congress should not extend to express companies, their officers, agents, and employees corresponding privileges for free carriage of goods with those which are given to the officers, agents, and employees of railroad companies in respect to transportation of persons, but—if the law is defective in this respect—the remedy must be applied by Congress and not by the courts.

The question for determination, therefore, is whether in its Conference Ruling 513 of July 20, 1917, *supra*, the Commission, in holding that the act to regulate commerce as amended does not authorize express companies subject to the act "to carry property either for its own officers or employees, or for the officers and employees of other common carriers, except at its legally published rates," has properly interpreted the law; and that question has again been carefully reviewed.

In the first place it is somewhat significant to note that the term "frank" did not appear in the act to regulate commerce until four years after the express companies had been brought within the purview of that law, and also that during that period there was no language in the act that could reasonably have been construed, from any point of view, as justifying the practice of express companies of issuing franks for the carriage of goods. It is also of importance to observe that the term appeared in the act not in connection with any new legislation respecting express companies, already subject to the act, but contemporaneously with the extension of the provisions of the act to transmission companies. Under these circumstances, in any effort to arrive at the legislative intent, there would appear to be strong grounds for thinking that the newly created right is properly to be regarded as applying only to the newly introduced carriers. A power granted and embodied in the same amendatory act in which the regulatory provisions are for the first time extended to another form of public utilities would seem naturally to relate to such carriers and, in the absence of appropriate language or the most obvious intendment, not to relate to other carriers that had long been subject to the provisions of the act.

The free carriage either of persons or of property is contrary to the general principles to be found in the act to regulate commerce, as amended. See sections 2, 3, and 6. The same principle is asserted even more strongly in the legislation accompanying the act itself and which was enacted in aid of its enforcement and for the punishment of those who offend its provisions. Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general principle to be found in the so-called antipass provision of section 1 of the act. Any free carriage of property that is lawful is to be found in the exceptions noted in section 22 of the act. While the free carriage of certain of the excepted classes of passengers has thus been authorized even when traveling for pleasure or for their personal benefit, the spirit of the whole act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22.

It is true that the term " frank " has long been associated with the free carriage of express packages; but it has also long been associated with the free transmission of messages by telegraph and telephone companies. And the mere appearance of the word in the act, although in new legislation by which the provisions of the act to regulate commerce were extended to telegraph, telephone, and cable companies seems to be the sole basis for the contention now urged by the express companies that the effect has been to sanction the free carriage of packages for their own officers and employees and for the officers and employees of other common carriers, contrary to the principle which, as we have just stated, runs all through the act and the accompanying legislation forbidding the free carriage of property except on certain public grounds specifically enumerated. If that is the effect of the incorporation of the word into section 1 of the act, the result will be the substantial destruction of the principle forbidding the free carriage of property for any one in any private interest; for while railroads may not haul property for their own officers and employees or for the officers and employees of other carriers, except at tariff rates, the construction of section 1 now proposed by the express companies would permit the railroads to use their locomotives, tracks, and other facilities in doing this forbidden service if the property is shipped as express matter by or to those enjoying the possession of express franks.

No construction which is inconsistent with the purpose of the law may be entertained, and anyone claiming the benefit of an exception must bring himself clearly within both the words and the reason thereof. *U. S.* v. *Dickson*, 15 Pet., 141, 165. It is also a general rule of construction that a proviso is not to be understood as adding new matter to the main clause, but rather as saving from

its operation certain of the subjects to which it is addressed and modifying the law as to them. But it will not be necessary to dwell upon the general principles of construction or to resort to citation of cases. It will suffice to say that upon a careful examination of the language of the proviso we are unable to find in it the force and effect contended for by the express companies. We therefore reaffirm the principle announced in *Conference Ruling 513*, and the express companies will be expected at once to discontinue the practice of issuing franks to their own officers and employees and to the officers and employees of other common carriers.

No. 7865.

CHAMBER OF COMMERCE OF JOHNSON CITY, TENN.,

v.

SOUTHERN RAILWAY COMPANY ET AL.

FIFTEENTH SECTION APPLICATIONS Nos. 366 AND 367.

Submitted June 5, 1918. Decided June 17, 1918.

Former finding to the effect that under the present rate adjustment there is an unjust discrimination against Johnson City and an undue preference in favor of Bristol, affirmed, and removal of discrimination ordered.

William A. Wimbish for complainant.

Theodore W. Reath and *Lucian H. Cocke* for Norfolk & Western Railway Company; *Claudian B. Northrop* and *Alex. M. Bull* for Southern Railway Company and other defendants; and *Nelson W. Proctor* for Louisville & Nashville Railroad Company.

Frank Lyon and *J. T. Cecil* for Southwest Virginia Shippers' Association, interveners.

REPORT OF THE COMMISSION ON REHEARING.

HARLAN, *Commissioner*:

In the original report in this proceeding, 46 I. C. C., 527, the class and commodity rates then in effect on traffic moving from Cincinnati, or through Cincinnati from beyond, by way of Speer's Ferry to Johnson City, in the state of Tennessee, were found in general not to be unreasonable but to subject that point of destination to undue prejudice and disadvantage and to be unduly preferential of Bristol, a competing point 25 miles to the northeast on the Tennessee-Virginia boundary. Being required to remove the discrimination by the order then entered to give effect to that finding, the carriers undertook to do so by increasing the Bristol rates to the Johnson City basis. Inasmuch, however, as the rates to Bristol on a number of important commodities were made up of the full combination on Walton or Roanoke the carriers assumed, notwithstanding our findings, that on those commodities and under those conditions they would not be required to put Johnson City on a rate parity with Bristol; in other words, in presenting their necessary fifteenth section applications they elected not to comply with the Commission's finding on those commodities, but proposed to leave the rates

to Johnson City on a substantially higher basis than the rates to Bristol. In submitting these applications they asked that our order be modified so as to cover that departure from its general terms. The Carolina, Clinchfield & Ohio, one of the defendants, not only did not join in asking for such a modification of our order, but on the contrary protested against it.

A request for a formal hearing on the fifteenth section applications was made on behalf of Bristol and other southwestern Virginia cities and the case was reopened solely with respect to the reasonableness of the rates proposed to Bristol, Johnson City, and other near-by points. On the argument, however, counsel for the Bristol interests discussed the question of discrimination, and, although it is not within the scope of our order reopening the case, we have given further consideration to that phase of the controversy. Upon the whole record we adhere to the findings of the original report and order and again hold that under the present rate situation there is an unjust discrimination against Johnson City and an undue preference in favor of Bristol.

In the original report and order the route through Speer's Ferry was specifically mentioned because of possible fourth section complications in connection with other routes, and in the expectation also that the rates made effective through that gateway would control the general adjustment and relationship as between these two competing communities. In that respect the carriers have properly understood our findings and order. While in general, as above stated, the present rates to Johnson City were found not to be unreasonable, the more important issue in the case was the undue discrimination against Johnson City; and that discrimination must be removed not only on class traffic but on the important commodities hereinbefore mentioned. If the combination of interstate rates on Walton or Roanoke controls the rates on certain commodities to Bristol, the Johnson City rates must be reduced. In other words, the unlawful discrimination against Johnson City can not be permitted to continue.

Since the case was heard the Director General of Railroads has issued General Order No. 28, and supplement thereto, increasing the present rates throughout the country. As these rates, which will become effective on June 25, are controlling, we can make no finding and enter no order upon the hearing of the defendants' fifteenth section applications. General Order No. 28, however, does not affect our former finding that Bristol and Johnson City should be on a rate parity from the territory involved in this proceeding; and an appropriate order will be entered to give effect to that finding.

No. 9448.

CONDIE-BRAY GLASS & PAINT COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.

Submitted May 17, 1917. Decided April 20, 1918.

Charges on a less-than-carload shipment of finished metal molding transported from St. Louis, Mo., to El Paso, Tex., on which charges were asssessed on basis of the first-class rate and minimum weight of 4,000 pounds because it was too long to be loaded through the side door of an ordinary 36-foot box car, not found unreasonable. Complaint dismissed.

C. H. Rodehaver for complainant.
R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

Complainant is a corporation engaged in the manufacture and jobbing of various kinds of glass and of paints at St. Louis, Mo. By complaint filed December 30, 1916, it alleges that charges of $63.60 collected for the transportation in October, 1915, of one less-than-carload shipment of finished metal molding from St. Louis to El Paso, Tex., were unreasonable to the extent they exceeded $15.90. We are asked to require the establishment from and to the points of shipment of a first-class rate, subject to a minimum of 1,000 pounds on articles too long to be loaded through the side door of an ordinary 36-foot box car and, on that basis, to award reparation. As the defendants established, effective May 1, 1916, an exception to the rule under which charges were collected in compliance with the order issued by the Commission in its supplemental report in *Minimum Charges on Bulky Articles*, 38 I. C. C., 257, which provides the minimum for which the complainant asked, the case is one of reparation only.

The shipment moved by way of the lines of the defendants: Chicago, Rock Island & Pacific Railway; Chicago, Rock Island & Gulf Railway; and El Paso & Southwestern companies. It consisted of a box, containing 42 pieces, ranging in length from 5 to 25 feet, of 1-inch, wooden-cored, copper-covered, finished molding, weighing 179 pounds. Although not measured by complainant, the box is estimated to have been approximately 25 feet in length and not to exceed

8 inches in width or depth. It was possible to load the molding in a box not to exceed this latter dimension by placing the short lengths of molding end to end. Charges were collected of the consignee, for which it was reimbursed by the complainant, in the sum of $63.60, computed on the basis of the first-class rate from St. Louis to El Paso and a minimum of 4,000 pounds in accordance with rule 20–B, effective May 15, 1915, of the western classification, as follows:

> Unless otherwise provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway, 6 feet wide by 7 feet 6 inches high, without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high, shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment.

This rule was published to comply with the order of the Commission in its original report in *Minimum Charges on Bulky Articles*, 33 I. C. C., 378.

The expense bill bears the notation, "Too long to load through side door of 36-foot box car. Rule 20–B. 25 ft. 1½ in length." Both the car in which the shipment was loaded at St. Louis and that in which it was delivered at El Paso were 40 feet in length.

Complainant offered no testimony to show that the charges collected on the shipment were unreasonable, apparently relying on the rule announced March 1, 1916, by the Commission in its supplemental report on *Minimum Charges on Bulky Articles*, *supra*, that is:

> Unless a lower rate is otherwise provided, a shipment which contains an article exceeding 22 feet in length and not exceeding 12 inches in diameter or other dimension shall be charged at actual weight and authorized rating, subject to a minimum charge of 1,000 pounds at the first-class rate for the entire shipment.

Neither the witness for complainant nor the representative of defendants was able to state the manner in which the shipment was loaded at St. Louis. The informal complaint does show that the shipment was transported by way of the Wabash Railway from Chicago, Ill., to St. Louis, for which movement the charges collected were 81 cents, based on a first-class rate of 45.5 cents per 100 pounds and the actual weight of 179 pounds. It appears that under the Illinois classification, which governed on this movement, there is no provision for assessing a minimum weight on articles too long to be loaded through the side door of a 36-foot box car.

Defendants resist an award of reparation, reiterating their position when the supplementary proceeding in *Minimum Charges on Bulky Articles* was had, that is, that there then had been hundreds of shipments of iron and steel articles, silo staves, culverts, and other long and bulky articles on which the minimum originally prescribed

by the Commission had been applied, and that it would be unfair to mulct the carriers in damages for applying a rule which the Commission had found reasonable. Defendants oppose the establishment of a precedent in this case for awards of reparation on all the shipments which moved during the time the original rule of the Commission was effective.

WOOLLEY, *Commissioner:*

The foregoing statement of facts, with a recommendation by the examiner that the Commission deny the prayer for reparation and dismiss the complaint, was filed in the record and served upon the parties under a rule of procedure which provides that exceptions to a proposed report be taken within 20 days. No exceptions were filed.

As stated above, the complainant offered no evidence to show that the charges collected on the shipment were unreasonable, apparently relying upon the fact that subsequent to the movement of said shipment the Commission prescribed a lower minimum on shipments of the kind involved. This would apply equally to every interstate shipment moving subsequent to May 15, 1915, upon which charges were assessed upon basis of the minimum first prescribed by the Commission and made effective on the date stated, and in our opinion does not afford a satisfactory basis for an award of reparation. We can only conclude from the record before us that the charges collected on the shipment involved have not been shown to be unreasonable. The complaint will be dismissed.

No. 7200.

TRAFFIC BUREAU OF THE SIOUX FALLS COMMERCIAL CLUB

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted May 15, 1915. Decided June 27, 1918.

Defendants' carload rates on anthracite and bituminous coal and on coke from Duluth, Minn., not shown to be unjust or unreasonable. Complaint dismissed.

R. D. Springer for complainant.

G. Roy Hall for Commercial Club of Duluth, intervener.

C. E. Childe for Traffic Bureau of Sioux City Commercial Club, intervener.

A. J. Branscom for Traffic Bureau, Commercial Club of Aberdeen, intervener.

R. G. Brown for Chicago, Rock Island & Pacific Railway Company.

Richard L. Kennedy, *W. D. Burr*, and *John F. Finerty, jr.*, for defendants.

Report of the Commission.

By the Commission:

Complainant is an organization of business men and shippers of Sioux Falls, S. Dak. By complaint, filed August 24, 1914, it alleges that rates of $2.50 per ton on anthracite coal, $2.40 on bituminous coal, and $2.55 on coke, from Duluth, Minn., and Superior, Wis., to Sioux Falls, are unreasonable and unduly prejudicial. Just and reasonable rates are asked for the future. The Traffic Bureau of the Sioux City Commercial Club intervened to preserve the present parity of rates; the Commercial Club of Duluth for just and reasonable rates to Sioux Falls; the Traffic Bureau, Commercial Club of Aberdeen, to protect its interests. The Great Northern Railway Company, hereinafter called the Great Northern, and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, hereinafter called the Omaha, are the only defendants. Disposition of this case has been withheld pending disposition of other cases which might have a bearing upon the issues presented.

Sioux Falls is 344 miles from Duluth over the Great Northern, 413 miles over the Omaha. Duluth is fairly representative of Superior also. The rates assailed earn 7.3 mills per ton-mile on anthracite coal over the short line, 6 mills over the Omaha; 7 mills on bituminous

coal over the short line, 5.8 mills over the Omaha. The rates on coal from Milwaukee, over lines other than defendants', to points in Minnesota, Iowa, South Dakota, and Nebraska earn less per ton-mile than the rates from Duluth and Superior earn over the Great Northern, which is the short line to Sioux Falls. The average revenue per ton-mile from the rates maintained by the Omaha from Duluth to points in Minnesota on its road south of St. Paul and Minneapolis and to points in South Dakota, Iowa, and Nebraska for an average distance of 390 miles is 6 mills on anthracite coal and 5.5 mills on bituminous coal, while its rates from Milwaukee to points on its line in Nebraska earn 4.4 mills per ton-mile on anthracite coal and 4.2 mills on bituminous coal. Joint rates maintained from Duluth by way of the Great Northern to points on the Illinois Central Railroad in South Dakota and Iowa from 350 miles to 421 miles from Duluth earn from 5.9 mills per ton-mile to 7.1 mills on anthracite coal and from 5.7 mills to 6.8 mills on bituminous coal.

A rate of $3 applied on anthracite coal from Duluth to Sioux Falls in December, 1895; a rate of $2.41 on bituminous coal. In 1898 the rate on anthracite coal was reduced to $2.50, which has been the rate ever since. For a short time in 1902 the rate on bituminous coal was reduced to $2.25, but on December 24, 1902, this rate was increased to $2.40, the rate since maintained. A proposed increase in the present rate on bituminous coal was disallowed in the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 611.

Rates to Sioux Falls are the same from Duluth, Minn., Superior, Ashland, Washburn, Milwaukee, Wis., and Peoria and Chicago, Ill., except on bituminous coal from Chicago, although the distances range from 344 miles to 561 miles. The rate maintained from Chicago on bituminous coal is $2.65 per ton. The rates applicable for distances comparable to the distance from Duluth to Sioux Falls over the Northern Pacific Railway from Duluth to points in North Dakota and from Des Moines, Iowa, on the Chicago & North Western Railway to points in Nebraska, are higher than the rates paid by complainant. From May 1, 1914, to December 31, 1914, 1,135 cars of anthracite and bituminous coal were delivered at Sioux Falls, of which only 304 cars moved from Lake Superior docks.

No evidence was offered relative to rates on coke other than distances and the amount of the rate assailed. It is stated in complainant's brief that coke usually takes the same rate as anthracte coal in the tariffs of the Great Northern.

The system of equalizing the rates from different lake ports and different mines gives complainant competing markets in which to purchase its coal, and while complainant is entitled to reasonable rates from its nearest source of supply, proof that rates from some of

the points from which the blanket rates are maintained, which rates are made to meet competition from nearer points, yield lower ton-mile earnings is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial.

We find that the rates assailed are not shown to be unlawful, and an order will be entered dismissing the complaint.

No. 9136.

CLEVELAND PROVISION COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted March 10, 1917. Decided July 23, 1918.

Charges for the movement of peddler cars from Cleveland, Ohio, to points in central freight association and trunk line territories found unreasonable and unduly prejudicial.

Tolles, Hogsett, Ginn & Morley, S. H. Tolles, and *Thomas H. Jones* for complainant.

Ernest S. Ballard for defendant lines in central freight association territory.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner:*

Complainant is interested in the shipment of fresh meat and packing house products in peddler cars from Cleveland, Ohio, to points in eastern Ohio, western New York and Pennsylvania, and West Virginia. Some of the points are located in central freight association territory; others in trunk line territory. To the points in central freight association territory the charges on freight shipped in peddler cars are computed at the less-than-carload rates applicable on the various consignments to their respective destinations and at their actual weights, but subject to a minimum charge based on the dressed-beef carload rate to the final destination of the car, and a weight of 20,000 pounds. The dressed-beef rate is usually 90 per cent of the third-class rate. There is no peddler car rule applying in connection with the joint rates from Cleveland to points in

eastern trunk line territory. When complainant desires to distribute in that territory freight which requires a high degree of refrigeration, it must use the carriers' ordinary stop-off arrangement applicable to traffic generally. This arrangement requires that the shipment be billed and charged for as a carload shipment to the final destination, with a charge of $5 for each stop made. Complainant alleges that both the peddler-car rule and the stop-off rule result in unreasonable charges; it refers, among other things, to more liberal rules under which its competitors at Buffalo, N. Y., and Pittsburgh, Pa., may ship into trunk line territory, to its alleged undue prejudice and disadvantage; and asks that a reasonable rule be established and applied uniformly to all the points in question. Defendant lines in central freight association territory admit that the peddler car rules should be the same in both territories, but suggest that uniformity be accomplished by canceling the present rule of the trunk lines and applying the rule of the central freight association lines. They are also willing to apply the latter rule in connection with joint rates from Cleveland to points in trunk line territory. The lines east of Buffalo and Pittsburgh which were made parties defendant have not appeared, and their attitude is not known.

The peddler car rule here assailed applies from Chicago, Ill.; Indianapolis, Ind.; Cincinnati, Ohio, and other packing centers in central freight association territory, as well as from Cleveland, and has been maintained in substantially its present form for many years. The weight of 20,000 pounds used in computing the minimum charge was, prior to June 16, 1916, the minimum weight on dressed beef. The dressed beef minimum is now 21,000 pounds, but we disapproved a proposed increase to that basis of the weight used in computing the minimum charge for peddler cars. *Peddler Car Minimum*, 43 I. C. C., 139.

Peddler car traffic has been considered by the Commission in several previous cases. The nature of the car and its operation were described in part as follows, in *Rules Governing Shipments of Freight in Peddler Cars*, 32 I. C. C., 428, wherein the minimum in western trunk line territory was involved:

The original arrangement permitted the sale from the cars, as peddlers from wagons, of fresh meats and packing-house products, but the growth of the business and economy of operation demanded that sales should be made prior to the shipment of the car, and that each package should be consigned to a particular consignee. The cars move from the packing houses, usually on certain days of each week, and the loading depends on sales made in advance, generally by salesmen of the packers who canvass the territories served by the peddler-car routes. When a packer has orders for a sufficient tonnage he makes arrangements with the carrier for the shipment and loads at his packing plant a

refrigerator car owned by him which is usually equipped with meat hooks and other necessary appliances. Each car contains on the average less than 100 consignments, which are loaded in station order. The car is then forwarded by fast freight to the first destination to which there is a consignment, after which it is handled as way freight and the various consignments are unloaded by the carriers at the stations to which they are billed. The packer not only precools the car and fills the bunkers with ice and salt at his own expense, but when reicing en route is necessary he pays for that also. The car is usually returned empty to the packing house from which shipped, and the carriers pay the owner 1 cent a mile for both loaded and empty movements. The average route is from 275 to 280 miles in length, but in some instances peddler cars move only 30 miles, while in others they move 900 miles.

The record in this case shows that in some instances the unloading of peddler cars is done by or with the assistance of the consignees' draymen. Witness for complainant testified that the practice was quite general, but a witness for the Pennsylvania lines west of Pittsburgh testified that investigation by him disclosed the fact that in 88 per cent of the cases peddler cars were unloaded by the carriers with little or no assistance from the consignees. Upon the whole, however, the nature and operation of the peddler car seems to be the same in the several territories.

The peddler car rule applying to points in central freight association territory covers primarily fresh meat and packing-house products, but also permits the inclusion of numerous by-products, such as soap, candles, canned soups, butter, cheese, etc., which, generally speaking, are shipped only by the large packers. Complainant, like others of the smaller packers, does not manufacture by-products. Its cars are usually made up of about 28 per cent fresh meat and 72 per cent packing-house products. Generally, they do not contain more than 10,000 pounds, and the freight charges computed at the less-than-carload rates applicable to the various consignments fall short of the minimum charge. It is said to be impracticable for complainants at present to load peddler cars any heavier. They include in the loading all the commodities which their salesmen are able to dispose of in a given territory. The amounts which must be paid to make up the minimum charge are commonly referred to as penalties. On 13 apparently typical cars, including 2 which moved to points east of Buffalo under defendants' stop-off rule applicable to traffic generally, the penalties paid by complainant are shown to have ranged from $3.53 to $28.71, and to have averaged $17.33. The present rule is better suited to the needs of the large packers who are able to load their cars much heavier than those of complainant. Some load as much as 30,000 pounds, but the normal car shipped by them carries probably 14,000 pounds. A more definite idea of the

amounts loaded by the larger packers may be gained from the following figures for the month of July, 1916, which are taken from defendants' brief:

Shipper.	Number of cars.	Average weight.
		Pounds.
Swift & Co.	188	15,984
Armour & Co.	43	15,515
Wilson & Co.	34	13,064
Morris & Co.	25	13,757
Kingan & Co.	8	20,244
Libby, McNeill & Libby	2	8,386

The cars of the large packers may not ordinarily contain any more meat than complainant's cars, but the weight of the by-products brings the freight charges up to a point where they approximately equal the charges on a minimum carload of dressed beef to final destination of the car. Thus the large packers are able to avoid the payment of heavy penalties, which complainant could probably do also if it manufactured and sold as many by-products as the large packers.

Complainant suggests that a reasonable and nondiscriminatory rule would name no minimum charge, but would provide a minimum weight of 10,000 pounds and require that if the minimum weight were not loaded, the deficit in weight be charged for at the first-class rate, which is the less-than-carload dressed beef rate, to the final destination of the car. It is of course willing that the rule be limited to fresh meat and packing-house products.

In the opinion of complainant the peddler car is an economic necessity. It contends that since the carriers do not themselves operate cars of a sufficiently high degree of refrigeration to protect meat, their peddler-car rules should be very liberal. Complainant asserts that it now ships about 20 cars per week, but that its business is constantly declining because of the alleged unreasonable and discriminatory requirements. Under the rule suggested it estimates that it would eventually be able to bring its shipments up to 100 cars per week.

The roads in western trunk line territory require the loading of 10,000 pounds of fresh meat and packing-house products in peddler cars. If that weight is not loaded, the deficit in weight is charged for at the fourth-class rate to the first destination for which the car contains a shipment. The car is also subject to a minimum charge based on 10,000 pounds at the fourth-class rate to the final destination. In *Rules Governing Shipments of Freight in Peddler Cars*, *supra*, we found that a proposed increase in the above weight factor to 12,000

pounds was not justified. The proposal contemplated the mixing of by-products with the other articles in order to enable the shipper to meet the minimum requirements, but it appeared that the only shippers which could meet those requirements were two large packers at Chicago. The record showed that the average earnings on peddler cars under existing minima were in excess of the average the respondents received on all less-than-carload freight, taking into account the mileage paid for the use of the cars.

The rule in trans-Missouri territory, which reaches to the Rocky Mountains, is similar to that in western trunk line territory.

In southwestern territory there is one rule which is substantially the same as that in western trunk line territory. Another provides a minimum charge based on 10,000 pounds at the less-than-carload fresh-meat rate to the final destination of the car and permits the loading of articles other than fresh meats and packing-house products.

The general rule in southeastern territory permits the loading of articles other than fresh meats and packing-house products. If 10,000 pounds are not loaded the deficit is charged for at the less-than-carload fresh-meat rate to the first destination. No minimum charge is required. This rule is not observed by the Illinois Central Railroad; if 12,000 pounds are not loaded, that road charges for the deficit at the less-than-carload rate on packing-house products to the first destination.

The lines operating east from Buffalo, N. Y., require but 8,000 pounds of fresh meats and packing-house products. Any deficiency in weight is charged for at the first-class rate to final destination. No minimum charge is provided. The Pennsylvania Railroad requires 10,000 pounds of freight and permits the inclusion of butter, eggs, and poultry.

The New York, Chicago & St. Louis Railroad, operating entirely in central freight association territory, has a rule which permits the inclusion of various articles and provides that if 10,000 pounds are not loaded, the deficit will be charged for at the first-class rate to the final destination of the car. No minimum charge is prescribed.

An analysis of these various rules shows that they are all much more favorable to the shipper than those here complained of. According to estimates submitted by complainant, the minimum charges for peddler cars from Cleveland to points in central freight association territory on the basis of rates in effect at the time of the hearing ranged from $36.60 for 100 miles to $53 for 300 miles. For the same distances the charges in trunk line territory appear to range from $11.12 to $18.88; in western trunk line territory from $15 to $25.50; and in southeastern territory from $16 to $31. The charges

based upon the rule suggested by complainant would apparently average from $15.40 to $21.40. For these distances the car-mile earnings as computed by complainant range from 36.6 cents to 17.87 cents in central freight association territory; from 11.12 cents to 6.29 cents in trunk line territory; from 15 cents to 8.50 cents in western trunk line territory; from 16 cents to 10.3 cents in southeastern territory; and from 15.4 cents to 7.13 cents on the basis of the rule suggested. On the average, the earnings to points in central freight association territory are perhaps more than double those in the other territories. This is so, notwithstanding the fact that transportation conditions generally are more favorable in central freight association territory than in western trunk line and southeastern territories, and but little different from those in trunk line territory. Defendants contend that the per-car charges in other than central freight association territory are too low considering the service performed.

On the 13 apparently typical cars above referred to the average haul was about 148 miles. The average haul on all freight handled by 4 of the principal defendants is given by complainant as 148 miles, the average per car loading as 47,580 pounds or almost 5 times the loading of complainant's peddler cars, and the average per car revenue as $19.60, or about the same as would accrue on peddler cars under the rule suggested by complainant. It is impossible, however, to say what an analysis of these averages of averages would show.

Complainant seeks to show that the operation of the peddler car substantially reduces loss and damage claims. For the year ended June 1, 1916, it found that its loss and damage claims on certain less-than-carload shipments of packing-house products in the ordinary merchandise cars of the carriers was 5.25 per cent of the total freight charges on such shipments, but that on mixed shipments of fresh meat and packing-house products in peddler cars for a corresponding period the claims amounted to only 1.25 per cent of the total per-car charges.

The shipper, in addition to furnishing the car, for which it receives what is deemed to be an inadequate rental charge, cleans, precools, ices, loads, tallies, seals, and cards the car, and consignees' draymen sometimes unload or assist in the unloading. One of the largest items for which complainant claims credit is the expense of icing and reicing, but whether the performance of these services by complainant results in any material saving to defendants is not clear. The carriers do not hold themselves out to bear the cost of refrigeration on all perishable traffic.

Peddler cars are often moved a portion of the distance on through trains and then hauled on a local which makes stops at various

points along the line. Sometimes they contain freight for only two or three points, and sometimes for various small stations. Their operation saves the carrier the expense of loading, but at Cleveland, as complainant is located on the tracks of the Baltimore & Ohio Railroad, other roads must absorb a charge of $2.50 per car for switching from complainant's plant.

Defendants are apprehensive that any reduction in the minimum charge as applied from Cleveland will be demanded by and accorded the large packers at Chicago, with the result that their peddler cars will in many cases be shipped without the by-products. In that event substantially the same service might be performed at much less than the present charge. Of course, revenue in addition to the peddler-car revenue would be derived from the separate shipment of the by-products, but the lessened efficiency of such a peddler car from a strictly transportation standpoint would remain. During the past few years efficiency in the handling of less-than-carload traffic has been a watchword with many carriers, and defendants seem to feel that for them to make any concession in the peddler-car rule would be a step backward. By careful attention to the service one of the defendants has increased the average weight loaded in merchandise cars from 13,000 pounds in 1912 to 17,000 pounds in 1916. Several of the other roads parties to the case have accomplished similar results.

Less-than-carload traffic shipped under refrigeration in other than peddler cars is generally transferred and consolidated at large stations. On the lines of the principal defendants the cars before consolidation contain on the average about 11,000 pounds, but after consolidation the loading averages perhaps as much as 21,000 pounds. There can be no question but that the peddler car with a light loading tends to inefficiency in the transportation system.

The evidence of defendants is convincing that the peddler car, as a rule, is accorded somewhat greater expedition than the ordinary merchandise car. Expedition increases the cost of a given service and is also a thing of value to the shipper. However, these considerations are offset, at least to some extent, by the fact that the initial terminal services on a peddler car, with the exception of switching, whether it be that of the line-haul carrier or its connection, are performed by the shipper. The cost or expense of switching from the shipper's siding in some cases may, and in other cases may not, be equivalent to the expense incident to the loading of merchandise by the carrier at its freight depot.

We conclude and find that the present rules under which complainant operates are unreasonable, and unduly prejudicial to Cleveland; that a reasonable peddler-car rule for defendants to apply

from Cleveland to the points in central freight association and trunk line territories would provide a minimum charge not in excess of the charge made for 12,000 pounds of freight at the third-class rate from point of origin to the final destination of the car; that the undue prejudice to Cleveland must be removed by defendants applying the same rule from Cleveland as is contemporaneously applied by them from Buffalo. Complainant does not ask for the extension of a reasonable rule to all central freight association and all trunk line territory, and does not state specifically to which points or to what extent of territory it is desired. Our finding, therefore, is necessarily general in form and an appropriate order can not be entered at this time. No feature of the peddler-car rule other than the provision for the minimum charge has been fully tried out. Supplemental proceedings may be brought if satisfactory arrangements are not put into effect by defendants within a reasonable time.

INVESTIGATION AND SUSPENSION DOCKET NO. 1155.

HEATED CAR SERVICE REGULATIONS.

Submitted March 19, 1918. Decided July 23, 1918.

Under their present tariff rules the respondents are liable for loss or damage due to frost, freezing, or overheating, not the direct result of actionable negligence of the shipper, when, at the request of the shipper, and for a charge in addition to the rate, the carriers furnish protection to perishable commodities against heat or cold. A proposed amendment intended to relieve the respondents of liability for loss or damage to protected shipments between points in the United States and points in the Dominion of Canada found to have been unlawful as to traffic from points in the United States to destinations in Canada. The determination of the propriety of the proposed new tariff rule applicable to shipments from points in Canada to destinations in the United States left with the Canadian commission.

F. H. Phippen for Canadian Northern Railway Company.

E. W. Beatty and *L. J. Reycraft* for Canadian Pacific Railway Company.

W. H. Biggar for Grand Trunk Pacific Railway Company.

H. W. Bishop for protestants other than Dominion Brokers, Limited.

REPORT OF THE COMMISSION.

Rules of certain carriers governing heated car service provide for the protection of perishable articles from loss on account of frost, freezing, or overheating, under two so-called options: (1) The shipper furnishes the service and assumes all responsibility for loss not the direct result of actionable negligence of the carrier; and (2) the carrier, at the request of the shipper, furnishes the service and is liable for loss, not the direct result of actionable negligence of the shipper. When the carrier furnishes the service certain charges are provided in addition to the transportation charges.

In supplement No. 10, filed to become effective October 29, 1917, of Countiss, agent, tariff I. C. C. No. 1014, providing rates for heated car service between points in Oregon, Washington, Idaho, and Montana and points in the Dominion of Canada, as well as numerous points in the United States, the respondents herein proposed to confine the application of their liability for loss due to freezing or from artificially overheating, not the direct result of the negligence of the shipper, to between points in the United States and to provide a new paragraph as follows:

(Applies only on freight destined to or shipped from points in Canada.) The Canadian carriers, on account of extremes in temperature, do not guarantee protection of carload shipments of perishable freight by the use of any artificial heat in transit or to cars held on tracks. Therefore, when artificial heat is furnished by carriers to such shipments on request of shipper or owner, it shall be solely at owner's risk of loss or damage by heat or cold, not the direct result of the actionable negligence of the carriers. In such cases the charges for artificial heat furnished by carriers provided under option 2 will be collected.

On protests of the General Brokerage Company, Grand Forks, N. Dak., on behalf of certain wholesale fruit houses located in Manitoba, Saskatchewan, and Alberta, Dominion of Canada, and of the Dominion Brokers, Limited, of Calgary, Alberta, Dominion of Canada, the operation of the proposed amendment was suspended until August 28, 1918.

On October 31, 1917, the Board of Railway Commissioners for Canada, *In the Matter of the Complaints of the General Brokerage Company et al.*, suspended similar clauses in the issue for Canada of the same tariff, until further order of the board.

In its first supplemental order in this case, dated December 3, 1917, the Commission suspended the operation of similar amendments in Canadian Northern Railway Company's tariff I. C. C. No. W. 347, applying between Duluth, Minneapolis, St. Paul, and other points in Minnesota, points in Wisconsin; Missouri River crossings and points in the Dominion of Canada; Great Northern Railway Company's I. C. C. No. A-4452, applying between points in Indiana, Illinois, Iowa, Michigan, Minnesota, and other states in the United States and points in the Dominion of Canada, and supplement No. 13 to Minneapolis, St. Paul & Sault Ste. Marie Railway Company's I. C. C. No. 3857, applying between points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin and points in the Dominion of Canada and the state of Washington, filed to become effective December 5, 1917.

None of the respondents offered any evidence in justification of the proposed amendments to these tariffs. The only respondents represented in the proceeding either at the hearing or on brief are the Canadian Northern Railway Company, the Canadian Pacific Railway Company, and the Grand Trunk Pacific Railway Company. Their plea is that our jurisdiction does not obtain, and in support of that contention cite numerous decisions of this Commission. These decisions hold that traffic between the United States and an adjacent foreign country is within our jurisdiction to the extent of its movement within the United States. *Black Horse Tobacco Co.* v. *I. C. R. R. Co.*, 17 I. C. C., 588; *Emery & Co.* v. *B. & M. R. R.*, 38 I. C. C., 636.

Upon this record, no evidence having been produced by respondents; nor justification made of the proposed rule in so far as it is applicable to transportation within the confines of the United States, to or from the Dominion of Canada-United States line, the examiner recommends that the Commission find the proposed amendments to have been not justified for application from points in the United States to the Canadian border or from the Canadian border to points within the United States specified in the tariffs the operation of which has been suspended in this proceeding.

HARLAN, *Commissioner:*

It appears from the foregoing statement of facts by the examiner who heard the testimony that under the existing tariffs of the respondents fruits and vegetables may move between interior Canadian points and interior points in the states of Oregon, Washington, Idaho, and Montana on joint through rates that offer shippers two alternatives. Under one alternative the shippers furnish their own protection against heat and cold, in which event they assume all responsibility for loss occasioned by those elements, except such as may result directly from the actionable negligence of the carrier. Under the other alternative the carrier furnishes protection against heat and cold and assumes all responsibility for such loss not the direct result of the negligence of the shipper. Under the latter arrangement the carrier makes certain charges in addition to the transportation charges. At the request of the Canadian carriers our domestic lines filed tariffs proposing to cancel this second alternative and to put in its place a clause under which the carriers will continue to supply protection at the additional charge now in effect, but will accept no liability for any loss resulting from heat or cold. The item states that it is published on account of the extremes of temperature in Canada. It is this provision that is under suspension.

As they had filed the suspended tariffs only because so requested by their Canadian connections the American respondents did not appear at the hearing. The Canadian lines were represented, however, and after a general explanation of their unsatisfactory experience under the present tariffs, raised a question as to the jurisdiction of this Commission to require the continuance of a tariff provision that imposes upon them a liability that they are no longer willing to accept.

For some years joint through rates from Canadian points to interior domestic points have been regarded as being within the general control of the Canadian commission, while joint rates from domestic points to interior Canadian points are left under the general control of this Commission. The origin and scope of this understanding between the two commissions is explained in *International*

Paper Co. v. *D. & H. Co.*, 33 I. C. C., 370. It is also referred to in *Rates on High Explosives to G. T. Ry. System Stations*, 33 I. C. C., 567, and was followed in *Aetna Powder Co.* v. *Wabash R. R. Co.*, 39 I. C. C., 199. It has proved to be an efficient working arrangement and will not be departed from by this Commission on light grounds, although we have felt it necessary to point out that our jurisdiction extends to the service of our domestic lines performed within the United States and to the charges therefor and that where circumstances seem to make such a course necessary we would require the domestic carrier to withdraw from participation in joint through rates to and from Canadian interior points and to establish a local or proportional rate to and from the border.

Whether by his recommendation that the Commission enter a finding that the rule under suspension has not been justified, in so far as it is applicable to transportation within the confines of the United States, the examiner intended to suggest that the American lines should withdraw from the existing joint through rates on fruits and vegetables moving to and from the Canadian points and that they should be required to publish local or proportional rates to and from the border is not altogether clear. But whether the traffic shall continue to move on joint through rates or upon local or proportional rates to and from the Canadian border, it would necessarily move as through traffic, and the examiner's proposal, if adopted, might result in a difference in the character of the liability of the Canadian and that of the American lines and might also involve the necessity, in order to fix the liability of the respective lines participating in the service, of opening the cars at the border to ascertain the condition of the traffic at that point. It is doubtful whether this would be practicable and whether such an arrangement would be satisfactory either to the carriers or to the shippers. Moreover, under certain weather conditions, the opening of the cars at the international line would not improbably result in damage to their contents.

Under all the circumstances disclosed of record, and in view of the fact that the so-called Cummins amendment to the act to regulate commerce does not relate to traffic moving from points in an adjacent foreign country to points in the United States, we are inclined to leave with the Canadian commission the determination of the propriety of the proposed new tariff rule respecting the liability of the carriers for damages resulting from heat or cold to fruits and vegetables moving from interior Canadian points to interior points in the United States under joint rates. Should the Canadian commission feel that the present rule in that particular involves hardships from which the carriers should be relieved, the shippers of such traffic would be remitted to their remedies in the courts.

It is our understanding, however, that the bulk of the traffic affected by the proposed rule here under suspension moves from domestic points to interior Canadian points. Such traffic is affected by the Cummins amendment. Omitting parts that are not pertinent, that provision as it now appears in the act to regulate commerce, as amended, reads as follows:

> That any common carrier * * * subject to the provisions of this act receiving property for transportation from * * * any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier * * * to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier * * * from the liability hereby imposed; and any such common carrier * * * from any point in the United States to a point in an adjacent foreign country * * * shall be liable to the lawful holder of said receipt or bill of lading * * * whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void.

While we have approved rates on fruits and vegetables offering shippers the two alternatives—(*a*) of furnishing their own protection against loss or damage by heat or cold with an assumption by them of all responsibility not the result of the negligence of the carrier, or (*b*) requiring the carrier, for an additional charge, to furnish protection and assume the liability for loss or damage resulting from heat or cold when not the result of the negligence of the shipper—*Protection of Potato Shipments in Winter*, 29 I. C. C., 504—and see no occasion for holding such adjustments to be illegal, the rule under suspension, while retaining for the carrier the present extra charge for the heating service on traffic moving from domestic points to interior Canadian points, proposes to relieve the carrier from all liability, although the extra charge is intended to compensate it for the element of risk involved. Such a rule we regard as hostile to the provision in the law just quoted.

[illegible] lows from what has been said that the tariff rule under sus-
[illegible] ust be canceled, permanently, so far as it affects the traffic
[illegible] n to interior Canadian points, and until the matter shall

have had consideration by the Canadian commission, so far as it may affect such traffic from Canadian points to interior domestic points. As the control and operation of the lines of the respondents have been taken over by the Director General of Railroads since the record in this investigation was closed and submitted, an order giving effect to the findings herein seems unnecessary, it being assumed that the matter will have timely attention by the Director General in conformity herewith.

No. 5733.

COLONIAL NAVIGATION COMPANY
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Submitted December 14, 1916. Decided July 1, 1918.

The practice of the defendants in maintaining a through route for the transportation of passengers and baggage between New York, N. Y., and points on its lines, via Providence, R. I., in connection with the New England Steamship Company, which it controls through stock ownership, while refusing to establish a similar route with the complainant, found to result in undue prejudice. Defendant required to establish joint passenger fares in connection with complainant not higher than those contemporaneously maintained in connection with the New Egland Steamship Company.

Wilder, Ewen & Patterson for complainant.
Bruce Wyman and *S. B. Perry* for defendant.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner:*

The complainant is a common carrier operating a line of daily boats between Providence, R. I., and New York City. The defendant operates a system of railroad serving the two points mentioned, and the whole of New England. In addition to its rail line running from Providence to New York, the defendant, through its stock ownership of the New England Navigation Company, controls the New England Steamship Company, operating a line of boats between Providence and New York City, with which line it maintains

through routes and joint rates for passengers and freight. The defendant has refused to enter into like arrangements with the complainant line for through ticketing of passengers and checking of baggage between New York City and Boston and other New England cities located on the line of the defendant railroad company via Providence, and for the through ticketing of passengers and through checking of baggage between Boston and other cities and towns located on the line of the defendant railroad company in various New England states via Providence to New York City, and the purpose of this complaint is to require the defendant to enter into such an arrangement with the complainant.

Originally this case was heard separately, but subsequently it was again set for hearing in connection with No. 6469, application of the New York, New Haven & Hartford Railroad Company under the Panama Canal act, with a view to giving the parties an opportunity to present any additional testimony they might desire. However, no additional evidence was offered.

The contentions of the defendant are that the Commission is without jurisdiction in the premises; that the petitioner is not a connecting carrier; that if the Commission has jurisdiction, the limitation on its authority to establish through routes would prevent an order requiring it to enter into the arrangement sought, as such an arrangement would require it to short haul itself; that by reason of its control of the New England Steamship Company, it now furnishes a rail-and-water route to and from New York City and it can not be required to share its traffic with a competitor from and to Providence; and that no discrimination is produced by this arrangement.

This record discloses that the dock of the complainant company at Providence is so situated that convenient transfer of passengers may be had to and from the defendant's railroad station by means of a trolley line running directly in front of the dock. Passengers are transferred between the dock and the railroad station over this trolley line. Passengers are also transferred over the same trolley line between the dock of the New England Steamship Company and the defendant's railroad station. Of the two, the dock of the complainant company is the nearer to the railroad station.

While in the nature of things there could be no actual physical connection between a boat line and a rail carrier, there can be no question that the complainant company is as truly a connecting carrier with the defendant's rail line as is the New England Steamship Company. So far as the feasibility of an actual physical connection with the rail carrier is concerned, the conditions are the same as to each of the steamship lines.

At the threshold of the inquiry the Commission is met by the question of jurisdiction, raised and urged on behalf of the rail carrier.

Section 1 of the act makes it the duty of common carriers "to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes." Section 15 provides, among other things, that the Commission may establish through routes and joint classifications and joint rates, and may prescribe the terms and conditions under which such through routes shall be operated whenever the carriers themselves shall refuse or neglect to establish such through routes or joint classifications or joint rates, and it is declared that this provision shall apply when one of the connecting carriers is a water line.

In view of these clear and positive provisions of the statute as to the duty of common carriers in respect to through routes and joint rates and as to the authority of the Commission to require such duty to be performed in case of refusal or neglect by the carriers, there would seem to be no room for doubt that the Commission has jurisdiction of the present controversy.

The defendant further contends that even if the Commission has jurisdiction in the premises, its authority is limited by another provision of section 15, which declares in effect that the Commission shall not require any company, without its consent, to embrace in a through route substantially less than the entire length of its railroad between the termini of such through route, unless to do so would make the through route unreasonably long as compared with another practicable through route that might be established. In other words the contention is that the Commission is without authority to establish the through route and joint rates asked for in this proceeding, because to do so would be to require the defendants to short haul itself contrary to the limitation referred to.

The defendant owns and operates a reasonably direct rail line between New York City and points in New England, via Providence, and also a through rail-and-water route, with joint rates for both passengers and freight, in connection with the New England Steamship Company. To require it to join with the complainant company in a rail-and-water route between the same points would undoubtedly be to require it to embrace within the new route substantially less than its entire rail line between the termini of such through route; but this is just what it has done of its own accord as to the through rail-and-water route now in operation in connection with the New England Steamship Company.

If the above-stated provisions of the act embodied the full expression of the legislative will as to the authority and power of the

Commission in the matter of through routes and joint rates where one of the carriers is a water line, the question would then be presented as to whether the limitation contained in section 15 would operate as a bar to complainant's demand. But the subsequent legislation of August 24, 1912, commonly known as the Panama Canal act, must be considered in this connection. This act, among other things, declares that:

From and after the 1st day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic.

Jurisdiction is conferred by the act upon the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition referred to, after full hearing, on application by any railroad company or other carrier. The Commission is further empowered on its own motion or on application of any shipper to institute proceedings to inquire into the operation of any vessel in use by a railroad or other carrier which has not applied to the Commission to have the question of competition or possibility of competition determined. Full authority and power are conferred upon the Commission by appropriate orders to give effect to its findings. Water carriers of both passengers and freight are included in the act.

It is further provided that when property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and water, which may or do engage in the same, in certain designated particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June 18, 1910. Among the particulars as to which additional jurisdiction is conferred upon the Commission are the following:

(*a*) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to

construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

(*b*) To establish through routes and maximum joint rates between and over such rail-and-water lines, and to determine all the terms and conditions under which said lines shall be operated in the handling of the traffic embraced.

(*c*) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply.

There are other provisions of the act that need not be here cited. It is sufficient to say that the additional jurisdiction includes authority and power (1) to establish physical connection between the lines of a rail carrier and the dock of a water carrier by one or another of certain stated methods; (2) to establish through routes and joint rates between and over such rail-and-water lines, and to determine the terms and condition for operating such lines; (3) to establish maximum proportional rates by rail to and from the port to or from which the traffic is brought or taken by the water carrier; and (4) to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. Upon this new legislation the question arises as to whether the jurisdiction and authority conferred are subject to the limitation contained in section 15. It is to be observed that the act contains certain limitations of its own. In establishing a through route and joint rates between rail and water carriers in a case where physical connection between a rail line and a water line is necessary it must appear (1) that such connection is reasonably practicable, (2) that it can be made with safety to the public, and (3) that the business to be handled will justify the outlay. The act is broad and comprehensive in terms and contains no other limitation upon the authority of the Commission to establish through routes and joint rates between and over rail-and-water lines.

Manifestly the purpose of the new legislation was to cover the entire subject of the regulation and control of interstate transportation over a rail line and a water carrier, at least as to their traffic, and to confer upon the Commission jurisdiction of such transportation without limitation, except as prescribed in the act itself. With the authority to establish through routes and joint rates is given authority to determine all the terms and conditions under which the rail-and-water lines shall be operated, to establish proportional rates by rail to and from the ports, and to determine what traffic may move thereunder. It would be difficult to conceive of language more comprehensive, and it is not believed to have been the intention to limit the authority conferred otherwise than as spe-

cifically stated. According to the rule of statutory construction, the specific statement of certain limitations in the act is clearly indicative of an intention to exclude any limitation not so stated.

To now apply the limitation of section 15 to cases which involve questions as to the propriety and feasibility of through routes and joint rates between and over rail-and-water lines would be inconsistent with the comprehensive and all-embracing authority plainly intended to be accorded by the new legislation.

This view is in harmony with well-recognized principles of statutory construction. Upon the ground of clearly expressed intention, the terms of a later special statute must control those of a prior general statute. This principle is stated in *Endlich on Interpretation of Statutes*, section 26, and is supported by general authority. In elucidation of the principle the author says:

> And so where there are in an act specific provisions relating to a particular subject they must govern, in respect to that subject as against general provisions in other parts of the statute, although the latter, standing alone, would be broad enough to include the subject to which the more particular provisions relate * * * Hence if there are two acts or two provisions in the same act, of which one is special and particular and clearly includes the matter in controversy, whilst the other is general and would if standing alone include it also, and if, reading the general provision side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision, it must be taken that the latter was designed as an exception to the general provision.

Where there are two acts on the same subject the general rule is undoubtedly to give effect to both if possible, but if the two acts are repugnant in any of their provisions the latter act, even though it may contain no repealing clause, will operate to repeal the former act to the extent of the repugnancy. *District of Columbia* v. *Hutton*, 143 U. S., 18, 26–27; *United States* v. *Tynen*, 11 Wall., 88, 92–93. Many authorities to the same effect might be cited.

The jurisdiction conferred by the act of 1912, certainly in so far as it relates to the transportation of property, is not subject to the limitation as to through routes and joint rates contained in section 15 of the general act.

In this proceeding the complainant company asks for a through route and joint rates for passenger traffic only. In view of this situation, the question arises whether the additional jurisdiction accorded by the new act includes transportation of passengers by rail and otherwise, or whether the transportation of property only is included. The first part of the act makes it unlawful for any rail carrier to own, lease, operate, control, or have any interest whatsoever in any common carrier by water operated through the Panama Canal or elsewhere, or any vessel carrying freight or *passengers* upon said water route or elsewhere, with which the rail carrier does or may

compete for traffic. Both passenger and freight traffic are here included. It is true that in another part of the act, which deals directly with the subject of through routes and joint rates, the word "property" is used, and it is claimed that this indicates an intention to exclude passenger transportation by rail and water from the additional jurisdiction accorded. Such a construction would be contrary to the general intent and purpose of the act considered as a whole, and is untenable.

While the act of 1912 was passed as an amendment to the general act, it nevertheless purports to deal anew and comprehensively with the subject of interstate transportation by rail and water. In its initial provisions, as has been indicated, both passenger and freight traffic are expressly mentioned as within its terms. Would it not be a strange construction that would attribute to Congress the purpose to exclude passenger traffic from the later provisions, which authorized through routes and joint rates with just such water carriers as are mentioned in the initial part of the act in connection with both passenger and freight traffic, and which invests the Commission with practically absolute power as to the terms and conditions under which such through routes shall be operated? There is no principle of statutory construction better settled than that an interpretation which would produce consequences out of harmony with the general purpose of the statute as a whole must be avoided if possible. The question is, therefore, whether a holding that passenger transportation is not embraced within the authority and power of the Commission under the act of 1912 would be contrary to the general purpose of the act as indicated by its general features and comprehensive terms. The Commission has jurisdiction of the carriers both by rail and by water. It is empowered to establish through routes and joint rates between and over the rail-and-water lines. It is authorized to determine all the terms and conditions under which such lines shall be operated.

It has been repeatedly held that under the act as it stood prior to the amendment of 1912 the Commission had authority to establish through routes and joint rates or fares for passenger traffic, and yet nowhere is such authority given in specific terms. It arises out of consideration of the act as a whole, and any other view would be unreasonable because out of harmony with the manifest general purpose and scope of the law. As the new legislation purports to deal with the entire subject of interstate rail-and-water transportation, and specifically mentions passenger transportation as within its terms for the purpose of determining questions of ownership or of interest in water carriers by the rail lines, it is natural to conclude that the mere mention of "property" in another part of the act, which standing alone might indicate a purpose to deal only with

the transportation of freight, should not be accepted as equivalent to an expressed omission of passenger traffic.

One view or the other must be accepted. There would seem to be no middle ground. This part of the act must be construed as absolutely excluding passenger transportation, or as including such transportation on the same basis as the transportation of freight traffic, except as to the matter of physical connection between the rail line and the dock of the water carrier, which is not necessary in handling passenger traffic.

It will be observed that the use of the word "property" is in a part of the act directly connected with the provision granting authority to establish the physical connection referred to. The natural inference is that the word was deemed proper in this particular part of the act because of a necessity in most cases for physical connection between a rail line and a water carrier in order to facilitate the through transportation of freight traffic, and that the word was not intended to limit to that traffic the provisions of the act as to the authority to establish through routes and joint rates.

Another allegation of the defendant is that by reason of its control of the New England Steamship Company it now furnishes a rail-and-water route to and from New York City, and can not be required to share its traffic with a competitor from and to Providence. This comes within the principle enunciated in *Flour City S. S. Co.* v. *L. V. R. R. Co.*, 24 I. C. C., 179, where, on page 184, it is said:

> That defendants have established through routes is conceded, and the question, therefore, is whether, under section 1, an additional route should be established. The theory of this provision is that carriers should freely interchange freight between their respective lines, to the end that interstate commerce may move without interruption or delay. There is no contention that the present routes are insufficient to accommodate freely all traffic offered, and we are not prepared to hold that, viewed solely from this standpoint, this section imposes upon defendants the duty to establish an additional route in connection with the complainant company, for it might well be said that if this were true defendants should establish through routes in connection with every carrier making request therefor. However, the provision in question should not be subjected to so narrow a construction, but should be read in connection with the latter portion of section 3, with section 15, and with a regard to the intendment of the act as a whole and the correction of the evils it has sought to remedy. Section 3 requires every common carrier subject to the provisions of the act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and forbids discrimination in the rates and charges between such connecting lines. This provision broadens section 1 and makes plain the intent of the Congress that every reasonable and proper facility shall be extended equally by a carrier to all of its connections and that no discrimination in its charges shall be made in favor of or against any connecting line. * * *

Prior to 1910 our power to establish through routes was limited to instances in which no satisfactory through route existed. The elimination of this limitation placed within the discretion of this Commission the establishment of additional through routes. In the exercise of this discretion the existence of through routes capable of adequately and expeditiously handling all traffic offered is entitled to much consideration, but no longer constitutes a barrier to another through route. The lower charge proposed to be made via the new route we leave for consideration when we come to fix the joint rate. All we here hold is that it is within the power of this Commission to establish an additional route in connection with the complainant steamship company, provided that company is such a common carrier as is contemplated by the law.

It should be noted that the defendants in the *Flour City S. S. Co. Case*, *supra*, had through routes and joint rates already established in connection with lake lines operated under a common management or control, and that the two cases are analogous, therefore, in this respect.

The further inquiry arises as to whether it is discrimination for the New York, New Haven & Hartford Railroad Company to maintain through routes and joint rates with the New England Steamship Company, which it indirectly owns through stock ownership in the New England Navigation Company, which in turn owns the stock of the New England Steamship Company, while at the same time refusing to enter into such route arrangements with the Colonial Navigation Company; or, stated more simply, can a railroad company be guilty of discrimination when the preferential treatment which produces the discrimination is accorded a steamship company which it owns by stock control? This question must necessarily be answered in the affirmative, for the idea that the jurisdiction of the Commission to relieve against such discrimination may be defeated because of such common ownership must be untenable.

This case is identical with *Pacific Navigation Co.* v. *S. P. Co.*, 31 I. C. C., 472.

It is the conclusion of the Commission from consideration of all the circumstances that the practice of the defendant in establishing and maintaining a through route for the transportation of passengers and baggage with the New England Steamship Company between points located on its line in New England and New York via Providence while refusing to establish and maintain a similar through route in connection with the complainant, operates to produce an undue prejudice to the complainant steamship line. The defendant will be required to establish through routes and joint passenger fares with the complainant between points on its line and New York via Providence, and such fares shall in no event be higher than those contemporaneously maintained in connection with the New England Steamship Company. An order will be entered in accordance with the views expressed herein.

STEAMER LINES ON LONG ISLAND SOUND.

No. 6469.

APPLICATION OF THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY FOR PERMISSION TO CONTINUE CERTAIN SERVICE BY WATER AFTER JULY 1, 1914.

Submitted December 14, 1916. Decided July 10, 1918.

Petition of the New York, New Haven & Hartford Railroad Company, filed pursuant to section 5 of the act to regulate commerce as amended by the Panama Canal act, for permission to continue its operation of certain services by water on Long Island Sound and elsewhere, granted, as under the present circumstances and conditions it is found that the services are being operated in the interest of the public and are of advantage to the commerce and convenience of the people, and that continued operation by the petitioner will neither prevent, exclude, nor reduce competition on the route by water under consideration. Action in the future dependent upon circumstances and conditions.

Benjamin I. Spock, *Alfred P. Russell*, *Nathaniel W. Smith*, and *John W. H. Crim* for petitioner.

H. LaRue Brown and *Frank W. Swacker* for the United States, intervener.

Wm. H. Chandler, *Wm. F. Garcelon*, *Wheaton Kittredge*, *Lewis A. Waterman*, *Ralph M. Greenlaw*, *Frederick M. Ives*, *Loring*, *Coolidge & Noble*, *J. C. Lincoln*, *J. S. Stone*, *P. J. Dowd*, *Wm. H. Day, Jr.*, *Edwin K. Porter*, *Chas. S. Davis*, *Clifford P. Warren*, *Jos. H. Lane*, *H. W. Nashrader*, *W. F. Clarke*, *W. B. Farr*, *Geo. E. Rix*, *Wm. P. McDermott*, *Oliver S. Hawes*, *C. B. Chase*, *Wm. N. McLane*, *Robt. S. Dresser*, *Chas. S. Mumford*, *Frank M. Hanley*, *Frank L. Hinckley*, *Max Levy*, *White & White*, and *Arthur N. Brown* for various interveners.

Report of the Commission.

Woolley, *Commissioner:*

This proceeding is upon application of the New York, New Haven & Hartford Railroad Company, filed January 6, 1914, under section 5 of the act to regulate commerce as amended by section 11 of the Panama Canal act, for an order extending beyond July 1, 1914, the time within which it may continue to operate, through subsidiary

companies, certain steamer and barge lines, and also to operate, both through a subsidiary company and directly, certain car floating and transfer equipment. The subsidiary companies referred to and the services performed by them are as follows:

The petitioner owns all of the capital stock of the New England Navigation Company, hereinafter referred to as the navigation company, and the latter in turn owns all of the capital stock of the New England Steamship Company, hereinafter referred to as the steamship company, the Hartford & New York Transportation Company, hereinafter referred to as the transportation company, and the New Bedford, Martha's Vineyard & Nantucket Steamboat Company. The steamship company operates six regular steamer lines between New York and the following ports, hereinafter referred to as the sound ports: Bridgeport, New Haven, and New London, Conn.; Providence, R. I.; and Fall River and New Bedford, Mass. It also operates a service between Newport, R. I., and Wickford Landing, R. I., a ferry service between New Bedford and Fairhaven, Mass., and during the summer months a service between Norwich, Conn., and Block Island, R. I., stopping each way at New London and at Watch Hill, R. I. In addition the steamship company operates lighters in New York harbor, performing lighterage service, not only on traffic handled by it, but also on traffic of the petitioner. The transportation company operates three steamer lines—one between New York and Hartford and intermediate points on the Connecticut River, and the other two between New York and Bridgeport and Providence, respectively. In addition it operates barges between New York harbor and Connecticut River points, and occasionally between other points. The New Bedford, Martha's Vineyard & Nantucket Steamboat Company operates a steamer service between New Bedford and Woods Hole, Mass., and the islands of Marthas Vineyard and Nantucket, Mass.

The petitioner owns and operates directly in New York harbor and waters adjacent thereto certain floating equipment, including 18 tugs and transfer steamers and 52 car floats. These are used in the conveyance of cars and contents between the petitioner's terminals at Oak Point and Harlem River, N. Y., in the Borough of The Bronx, and various points in New York harbor, including the piers and termini of various steamship and railroad companies. It is sometimes necessary to charter additional lighters for this service. The petitioner also operates a limited car-float service in Boston harbor.

The petition also covers the Merchants & Miners Transportation Company and the Eastern Steamship Corporation, in which the petitioner, through the navigation company, had an interest at the

time the petition was filed. The record shows that prior to April 15, 1914, the navigation company owned 25,317 shares of the capital stock of the Merchants & Miners Transportation Company, but it was stated by counsel for the petitioner that on that date it disposed of its entire holdings and now has no interest whatsoever in the company. The petition will therefore be denied in so far as it refers to this company.

At the time the petition was filed the transportation company owned all of the stock of the Maine Steamship Company, and the latter, in turn, owned 15,000 of the 30,000 shares of preferred, and 20,000 of the 67,500 shares of common stock, and $2,500,000 of the $5,700,000 of the first-mortgage bonds of the Eastern Steamship Corporation. Under a decree of the United States district court for the southern district of New York, entered October 17, 1914, the navigation company was directed to sell said stocks and bonds on or before July 1, 1917, and its officers, directors, agents, and employees were enjoined from voting upon any capital stock of said Eastern Steamship Corporation at any meeting or for any purpose. Subsequently the order was modified to permit the navigation company to participate in the reorganization of the company and perform certain acts which might be necessary in connection therewith. In its brief the petitioner states that since the final hearing it has sold all of its 20,000 shares of common stock and also $1,000,000 par value of bonds; that the navigation company has become a party, with other creditors, to the reorganization plan and has agreed to accept in exchange for its 15,000 shares of preferred stock 18,750 shares of preferred stock of the reorganized company, and also to exchange its $1,500,000 par value of first-mortgage bonds for a like amount of income bonds; that it has also paid an assessment of $25 a share, a total of $375,000, on its holdings of preferred stock. The order of the court, as now modified, requires the petitioner to sell its interest in the Eastern Steamship Lines, Incorporated, the successor to the Eastern Steamship Corporation, on or before April 1, 1919. Therefore, it will not be necessary for us to enter an order at this time with reference to this company.

Extensive hearings were held in New York, Boston, and Providence, and a large number of witnesses were heard, including representatives of state commissions, of municipalities, of boards of trade and chambers of commerce, and of manufacturing and other commercial and shipping interests. The Department of Justice intervened and participated in the hearings; in its brief and argument it contended for the denial of the petition. With but few exceptions, the intervening shippers favored the granting of the petition. As it was felt that action should be taken only upon evidence showing

all phases of the transportation situation in New England, we delegated a special agent to make an investigation and to testify to such facts as he could ascertain, which in his opinion would throw light upon the questions brought before us by the petition. The greater part of his testimony was based upon a study of the records and files of the petitioner. This procedure resulted in a more complete record than would otherwise have been obtained, as evidence was secured which, from the very nature of the case, would not have been offered by the petitioner or the interveners.

At the time of hearing the steamship company owned and operated 12 combination passenger and freight steamers, 8 freight steamers, 4 steam lighters, and 1 tug. In addition it used about 70 lighters in connection with its deliveries in New York harbor, of which 26 were owned by it and the balance chartered.

The so-called premier service of the steamship company is the Fall River line, the two combination steamers operated during the summer months being the largest and most complete in the company's fleet. On this line a combination passenger and freight steamer is operated each way daily throughout the year, and in addition a freight steamer daily except Sunday and on Sunday when necessary. On the New Bedford line two combination steamers are operated during the summer months, making six trips weekly in each direction. During the balance of the year there is no passenger service and two freight steamers are used. There is likewise no passenger service on the Providence line during the winter months, and the schedule is substantially the same as that on the New Bedford line. On the New London, New Haven, and Bridgeport lines combination steamers are operated daily in each direction; on the New Haven line a freight steamer is operated when necessary; and on the Bridgeport line a freight steamer is operated daily in each direction throughout the year. But one combination and one freight steamer are necessary on either the New Haven or the Bridgeport line, as a boat can make a round trip daily between either port and New York. During the winter season, when travel is light, the large Fall River steamers are taken out of service and the combination steamers used on the Providence line during the summer months are substituted. The same arrangement is in effect between the New London and New Bedford lines.

The Fall River and Providence lines use piers 14 and 15, North River; the New Bedford and New London lines pier 40, North River; and the New Haven and Bridgeport lines piers 28 and 29, East River.

On the Block Island line the steamship company operates one combination steamer on a daily schedule during the summer months. The Newport and Wickford Landing line is devoted largely to the

handling of passengers, the distance via water between its termini being 72 miles by rail and but 12 miles by water. Only one boat is operated.

The New Bedford, Martha's Vineyard & Nantucket Steamboat Company operates three combination steamers between New Bedford, Woods Hole, and the islands of Marthas Vineyard and Nantucket on the following schedule: During the summer months 4 round trips daily to Martha's Vineyard and 2 to Nantucket; during the winter months 2 daily to the former and one to the latter. The schedules are arranged to connect with petitioner's trains at New Bedford and Woods Hole.

While the petitioner interchanges traffic with all of the lines of the steamship company and with the New Bedford, Martha's Vineyard & Nantucket Steamboat Company, it has no joint rates or arrangements with the transportation company, and the only traffic which that company handles to and from interior New England is in connection with trolley lines out of Providence. On the Hartford line two steamers, carrying passengers and freight, are operated daily during the season of navigation. On the Bridgeport line one steamer, handling freight only, makes a trip in each direction daily except Sunday. On the Providence line two steamers, carrying both passengers and freight, are operated on a daily schedule during the entire year. In the barge service between New York harbor and Connecticut River points the company used at the time of hearing 34 barges and 7 tugs, all owned by it.

The first question for our determination is whether or not the petitioner does or may compete for traffic with the water lines covered by the petition. If our finding is in the affirmative, we next have to consider whether or not the existing services by water are being operated in the interest of the public and are of advantage to the convenience and commerce of the people, and whether or not an extension of time during which such services may continue will exclude, prevent, or reduce competition on the route by water under consideration.

So far as the steamship company and the transportation company are concerned, the possibilities of competition with the petitioner are obvious, for both the petitioner's rail lines and the steamer lines in question operate between New York and the sound ports. There is a possibility of competition between the petitioner and the New Bedford, Martha's Vineyard & Nantucket Steamboat Company between New Bedford and Woods Hole, but not on traffic to or from Martha's Vineyard or Nantucket. The petitioner, while not specifically admitting the existence or possibility of competition between

its rail and its steamer lines, apparently regarded its possibility as self-evident and attempted neither to show nor contend that the water lines involved do not come within the scope of section 5 of the act as amended; and in our opinion they do. So long as the petitioner holds an interest in the steamer lines it may be said that it may compete with the barges operated by it in New York harbor.

In considering the questions affirmative answers to which are conditions precedent to the entry of the order asked by the petitioner, we must first look at the main physical characteristics of the region served by the petitioner's rail and water lines, and at the general transportation problem of New England, which in *Proposed Increases in New England*, 49 I. C. C., 421, decided April 16, 1918, we said "is in many respects distinctive." In further discussing the question we then said:

* * * This grows in part out of geographic conditions and to a still greater extent out of industrial and economic conditions. The New England lines serve directly almost none of the territory outside of New England, and they must depend in considerable part, so far as freight traffic is concerned, upon the tonnage interchanged with their rail connections to the west and north and with steamship lines serving the New England ports. For these reasons, and because they participate in only a part of the haul on through freight traffic into and out of New England, the New England lines have sometimes been referred to as "mere terminal or switching railroads," a statement that is misleading if strictly interpreted, but not wholly without value as suggesting a reason for some of the difficulties encountered by these carriers.

Another unusual feature of the New England situation is the character of the freight traffic. In no other section of the country does so large a percentage of the tonnage consist of high-grade manufactured products. Barring products of the forest and of the quarries, the outbound movement of raw materials from New England is almost negligible. New England's industrial life depends largely upon importing large quantities of iron, cotton, wool, and other raw materials from the west and south and converting them into finished products. Power used in New England for these manufacturing processes is mainly derived from coal originating outside of New England and transported substantial distances by rail or water. It is estimated that for every three carloads of manufactured products moving west from New England five carloads of raw materials move eastbound into New England. Consequently there is a heavy movement of empty cars from New England to the west. One embarrassing result of this poorly balanced movement of traffic is that the New England carriers sometimes find it impossible to return cars to their western connections as fast as they receive them. This difficulty has been increased during the past two or three years by inadequacy of transportation facilities and delay at terminals. It results that the railroads in southern New England have for some time found their tracks and terminals blocked with cars, and their bad financial situation has been made much worse by reason of car per diem expenses. During the two years ended June 30, 1917, the single item of hire of equipment for the New Haven and Boston & Maine amounted to approximately $9,638,000, or 50 per cent of the combined net corporate income of the two railroads during the two-year period. For the

year ended December 31, 1916, the item of hire of freight cars, debit balance, was $2,623,507 for the New Haven and $2,561,723 for the Boston & Maine. As this case is in essence a rate revenue case, this heavy drain upon the resources of the New England carriers can not pass unnoticed.

Another peculiarity of the New England situation is the relatively large proportion of revenue derived by the carriers in southern New England from passenger traffic. During the year ended June 30, 1917, 45 per cent of the New Haven's revenue and 34 per cent of the Boston & Maine's revenue were derived from passenger and allied traffic.

New England has a population of about seven and a quarter millions. Probably there is nowhere in this country a substantially equivalent population living upon a comparable area of land so dependent upon transportation for the necessaries and comforts of life as is this New England community. Yet, curiously enough, this highly intelligent and prosperous community has allowed its chief railroads to be wrecked by mismanagement (to use no stronger phrase) equaled in but few instances reflected in our reports. It would be difficult to exaggerate the handicap with which New England is now suffering from this mismanagement. See *The New England Investigation*, 27 I. C. C., 560, 607; *Financial Investigation of N. Y., N. H. & H. R. R. Co.*, 31 I. C. C., 32.

New York early became the principal port of the country, as well as a great manufacturing center and a jobbing point of prime importance, and as New England was one of the first sections to develop extensive manufacturing industries, rapid and dependable transportation to and from the business districts of New York became, and still is, of great importance. Prior to any rail construction in New England there were regular steamer lines between New York and the sound ports, and the first railroads in New England ran from those ports to Boston and to interior cities. These early rail lines either inaugurated or acquired steamer lines or else entered into contractual arrangements with them for the handling of through traffic, and in many cases the rail-and-water routes so established were highly competitive. The record shows that practically ever since the roads were built special passenger and freight trains have been operated to connect with the sound lines. By 1840 boat trains were operated from Boston to connect with the Providence line and also with the Stonington line, then operating between New York and Stonington, Conn., and the Hartford & New Haven Railroad Company operated special boat trains from Springfield and Hartford to New Haven, connecting with the New Haven Steamboat Company. It was due to geographical conditions, therefore, that most of the lines in southern New England were built from the sound ports, through the river valleys, to the north, and the contention that the natural route to New York for the high grade manufactured products of New England is rail and water has a sound basis.

Gradually rail construction continued until there were strong all-rail routes between New York and Boston and other points, and about 1892 there came a period marked by the consolida-

tion of many of the lines serving New England, both by rail and by water. By 1904 the petitioner had acquired, through purchase or long-term lease, all of the lines now included in its system, and all of the steamer lines now operated by the steamship company. Some of these water lines came to it with the rail lines originallly owning them; others were purchased directly. In 1906 the petitioner acquired the transportation company then operating the steamer line and the barge service between New York and Connecticut River points, and subsequently it caused to be transferred to it the Bridgeport and Providence lines. In 1904 the petitioner made a general readjustment in the handling of rail-and-water traffic with the object, it is claimed, of effecting the greatest possible economy and efficiency of operation. The map herewith shows via which sound line rail-and-water traffic from and to various parts of the petitioner's system is handled.

Looking then at that section of New England bounded on the west by the New York Central & Hudson River Railroad and on the north by the Boston & Albany Railroad, within which the majority of the petitioner's lines are located, we see that the petitioner is the only steam railroad other than the Central Vermont Railway, which extends south from a connection with the Grand Trunk Railway through the states of Vermont, Massachusetts, and Connecticut to New London. In addition the petitioner, whose rail lines serve all of New England's ports from Boston south, operates a steamer line with which it makes interchange between New York and each of the six sound ports named, and also operates three steamship lines with which it makes no interchange—two between New York and sound ports and one between New York and interior points on the Connecticut River served by petitioner's rails.

These, it should be stated, are not the only water lines operating from the ports. The Central Vermont Railway has a steamer line between New York and New London, which, however, is devoted almost entirely to through traffic. There are also three independent lines between New York and sound ports which do almost entirely a port-to-port traffic, as the petitioner interchanges no traffic with them; they are the Starin line at New Haven; the Norwich & New York Propeller Company, popularly known as the Chelsea line, at New London and Norwich; and the Colonial Navigation Company at Providence. Between Boston and New York the Eastern Steamship Lines, Incorporated, operates what is popularly known as the Metropolitan line, and from Boston and Providence there are steamer lines to southern ports.

In addition to passenger trains, scheduled to make close connection with the boats, the petitioner operates from interior New England

to the sound ports fast freight trains, which are given the right of way over all other than passenger trains and trains carrying perishable freight, the schedules being arranged to make delivery to the steamboat piers in just sufficient time to load the freight on the evening boats and secure delivery in New York the following morning. Freight tendered at Worcester, Mass., by 11.30 a. m. is delivered by the Providence line at piers 14 and 15, North River, and freight tendered at the same place by 2.30 p. m. is delivered by the New London line at pier 40, North River, the following morning. Freight tendered at New Britain, Conn., at 5 p. m. one day is delivered at piers 28 and 29, East River, early the following morning by the New Haven line. From Lawrence, Mass., freight tendered by 5.45 p. m. reaches New York the morning of the second day, and if shipped from Manchester, N. H., at the same hour the morning of the third day. Generally speaking, there is an overnight delivery from points south of the Boston & Maine Railroad and a second or third morning delivery from points on that line, from which a large volume of traffic moves rail and sound.

In considering whether or not the existing services by water are being operated in the interest of the public and are of advantage to the commerce and convenience of the people, we have to look at the whole transportation machinery in New England and at the natural limitations of transportation on Long Island Sound. As stated in the quotation above, the raw materials used in manufacturing in New England are brought in, generally from distant points, and a large part of the outbound manufactured products are shipped beyond New York. On much through traffic handled to or from New York by steamer the rail-and-sound route is the natural one, but it will readily be seen that on the majority of New England traffic, especially inbound heavy, low-grade raw materials, transportation by boat between New York and the sound ports as part of the through movement would be neither economical nor satisfactory. However, a glance at the map of the region, with especial reference to the physical characteristics and the general north and south direction of the rail lines serving it, shows that a large part of the through traffic has to be "funnelled" through the petitioner's shore line, and therefore in considering whether the existing service is in the public interest we should look to the whole movement of traffic and ascertain not only whether the service between New England and New York is rapid and dependable, but whether the sound lines are being used to the greatest possible extent consistent with economy and expedition in an effort to relieve the rail system. The lines in New England have been severely taxed with the great increase of traffic, and now that the utmost service from our trans-

portation machinery is of the greatest importance in the forwarding of the nation's great purpose, the interest of those actually shipping over the petitioner's lines may be regarded as identical with those of the whole people; therefore in considering the petition we must give weight to the conditions which the war has brought about, including those resulting from the taking over of railroad and steamship lines by the President, and must view the questions more broadly than under ordinary conditions in times of peace.

Whatever criticism of, or dissatisfaction with, the petitioner there may be in New England because of past mismanagement or present congestion on its rails, it does not extend to the through service of the petitioner and the lines of the steamship company. The testimony of the large number of witnesses heard was that it is expeditious, regular, and dependable, and that it is absolutely essential to the continued prosperity of New England that it be kept up to its present standard. Their testimony, in fact, was to the effect that were shippers unable to guarantee to buyers in New York prompt and reliable delivery a large part of the traffic would not move at all, as due to the high cost of storage space in New York the jobbers and dealers in manufactured products do not ordinarily carry extensive stocks but rely upon prompt shipment and delivery of their orders and if prompt delivery could not be guaranteed from New England the business would be secured by manufacturers in New Jersey and other sections. The witnesses appearing were almost unanimous in stating that the lines of the steamship company are being operated in the interest of the public and are of advantage to the commerce and convenience of the people, and in asking that the petition be granted; and in addition we received a great number of petitions from municipal authorities and boards, boards of trade, chambers of commerce, and organizations of various other characters, as well as numerous letters from business houses and individuals located in almost every section of New England, urging favorable action. While these petitions are not evidence of the facts stated therein they, together with the testimony of many witnesses, are convincing that the sentiment of New England is strongly in favor of a continuation of the joint ownership of the rail and the water lines. It was patent that their attitude is based largely on a belief that the service is as satisfactory as they can reasonably expect and a fear that should the petition be denied there would follow a substantial impairment of the rail-and-sound service, as the self-interest of the petitioner might lead it to send as much traffic as possible via its all-rail route and to make less effort to maintain the speed and reliability of the rail service between interior points and the sound ports. The shippers generally do not believe that the all-rail serv-

it, as a matter of fact, endeavor to send via its rail lines a substantial part of the traffic now carried by the sound lines; and if so, would that lessen competition on the route by water? If, too, under independent operation of the sound lines the service became less rapid and dependent, both all rail and rail and sound, would the traffic in fact materially disappear, as testified, and would that have the effect of reducing competition on the route by water? Would our authority to establish through routes and joint rates between the petitioner and water lines serving the sound ports be any less if the petition should be granted than at present; in other words, would the fact that a rail carrier owns the stock of a steamer line operating between two ports be entitled to any greater weight than the fact that there is already in existence a satisfactory route between the rail carrier and an independent steamer line? We have answered that in the negative in *Colonial Navigation Co.* v. *N. Y., N. H. & H. R. R. Co.*, *ante*, p. 625. On the other hand, under independent ownership of the sound lines, could the petitioner for any substantial length of time make one boat line strive against another for through traffic originating on its lines with the result that competition would be increased, and would it be to its own interest to encourage such competition, which might have the effect of reducing rates between the ports? The question seems to resolve itself into whether the ownership and operation by the petitioner of steamer lines between New York and the sound ports necessarily excludes, prevents, or reduces competition on the route by water, or whether the policy of the petitioner in the operation of both its rail and its water lines may be given consideration.

All things considered, including the physical characteristics of the region and the direction in which early conditions caused the rail lines to be built, we are strongly of the opinion that economy and efficiency demand the greatest possible coordination between the petitioner's rail lines and steamer lines to New York, and that there is slight probability that this could be secured to as great an extent as at present under independent ownership and operation of the steamer lines. We are therefore of opinion, and find, that the lines of the New England Steamship Company are being operated in the interest of the public and are of advantage to the commerce and convenience of the people. In view of the present conditions, under which, as stated, competition is practically, if not entirely, impossible, we are not called upon at this time to express opinions as to the several questions stated above, but conclude that we are justified in finding, and do find, that an extension of time within which the petitioner may operate said lines will neither exclude, prevent, nor reduce competition on the route by water under consideration. If, after con-

ditions again become normal, the policy of the law with reference to water transportation should be unchanged, and it should appear probable that the operations of the steamship company are such as to exclude, prevent, or reduce competition within the meaning of section 5, or otherwise are not in the public interest, we can reopen the investigation, supplement the testimony already in the record, and again consider the petition.

The situation of the Hartford & New York Transportation Company is substantially different from that of the steamship company, and were conditions different we can see no justification for granting the petition in so far as it refers to this company. However, upon the considerations stated above, especially with reference to the absence of any competition under government operation, we feel justified in finding, and do find, that the lines of this company, steamer and barge, are being operated in the interest of the public and are of advantage to the commerce and convenience of the people, and that an extension of time during which such operation may continue will neither exclude, prevent, nor reduce competition on the route by water under consideration. The petitioner and the New Bedford, Martha's Vineyard & Nantucket Steamboat Company can not compete for any substantial traffic, and the transfer and lightering services of the petitioner are necessary extensions of its rail lines.

On or before October 1, 1918, the petitioner should file with us in the manner prescribed in our regulations all of its port-to-port rates applicable to the movement of traffic subject to the act.

An appropriate order will be entered.

ANDERSON, *Commissioner*, dissenting:

With the report in this case I am unable to concur; I submit a brief statement of my views.

The Panama Canal act asserts emphatically the competitive theory as between rail and water carriers. We have no authority whatsoever to deal with the continued operation or ownership of water carriers by rail carriers, unless we find that such continued operation will "neither exclude, prevent, nor reduce competition on the route by water." On the indisputable and practically undisputed facts, the New Haven's boat lines on Long Island Sound are competitive with its rail lines. This was recognized and flatly stated in our Thirtieth Annual Report to Congress (December 1, 1916), pages 63 and 64, where we said:

> Cases of this kind have come forward and are now pending in which the competition is real, substantial, and not denied, but in which there is abundant testimony on behalf of shippers and shipping interests generally in the territory served, frequently not contradicted in any degree, to the effect that the service is in the interest of the public and of advantage to the convenience and com-

merce of the people, and that a discontinuance thereof would be substantially injurious to them and to their localities instead of working any public benefit.

* * * * * * *

The New York, New Haven & Hartford Railroad system is made up of various formerly independent lines of rail and water carriers. By purchases and consolidations the New Haven company has become the owner of various water lines, operated mainly between New England points and New York harbor, which compete directly with its rail lines between the same points. There is no question as to the competition, but the record is replete with evidence from shippers and representatives of communities in New England to the effect that the service is in the interest of the public, is of advantage to the convenience and commerce of the people, and if the present ownership and operation is discontinued there will be no reasonable adequate service to take its place, and the communities will be deprived of the benefits of the water transportation and the competing routes, thus inflicting upon them irreparable injury and benefiting no one.

We think that these facts should be brought to the attention of the Congress, so that in the light of those facts it may determine whether or not authority shall be conferred upon the Commission to permit, in such cases and under such circumstances, a continuance of the railroad ownership, control, or operation of the water lines, subject to such further and different orders as the Commission may subsequently enter upon a further hearing and a showing of substantially changed circumstances and conditions.

It was again recognized in our Thirty-first Annual Report to Congress (December 1, 1917), where we said:

In the last annual report, at page 63, we stated that in interpreting the Panama Canal act we had held that the competition or possibility of competition dealt with in the act was not a vague, indefinite, or remotely possible competition, but real and substantial competition; and that where the competition or potential competition was remote, improbable, or negligible the operation of boat lines by rail carriers might be continued where it was affirmatively shown that such boat-line service was being operated in the interest of the public, was of advantage to the convenience and commerce of the people, and a continuance thereof would neither exclude, prevent, nor reduce competition on the route by water. We there brought to the attention of Congress a number of cases then pending in which the competition was real and substantial and not denied, but in which there was abundant testimony on behalf of shippers and shipping interests generally in the territory served to the effect that the service was in the interest of the public and of advantage to the convenience and commerce of the people, and that a discontinuance thereof would be substantially injurious to them and to their localities instead of working any public benefit. We think that these facts should again be brought to the attention of Congress, so that it may determine whether or not authority shall be conferred upon the Commission to permit, in such cases and under such circumstances, a continuance of the railroad ownership, control, or operation of the water lines, subject to such further and different orders as the Commission may subsequently enter, upon a further hearing and a showing of substantially changed circumstances and conditions.

These two reports to Congress amount to a recommendation by this Commission that the law be changed. One suggestion considered

was that the word "and" be changed to "or" in that part of the act which authorizes the Commission to extend the time for joint operation. If this suggestion had been adopted we should have had jurisdiction to grant extension if we had found that such continued operation was *either* in the public interest *or* that it would "neither exclude, prevent, nor reduce competition." Congress did not adopt our recommendations. It left the Panama Canal act unchanged. The Commission has, therefore, no power to grant an extension, unless it finds, *both*, that continued joint operation will "neither exclude, prevent, nor reduce compeition" *and* that the service by water "is being operated in the interest of the public and is of advantage to the convenience and commerce of the people." Compare *Lake Lines Applications under Panama Canal Act*, 33 I. C. C., 699. See also *Application Southern Pacific Co.*, 32 I. C. C., 690. In that case we said, page 693:

> The language "does or may compete for traffic" and "possibility of competition" is strong and significant. Considering the whole act and its manifest purpose to dissociate railroads from competing water lines as described therein, these phrases evidently mean that one purpose of the inquiry by this Commission shall be to ascertain whether under existing conditions there is competition or whether there may be competition if the railroad interest in the water carrier or vessel is eliminated.
>
> This section of the Panama Canal act indicates, among other things, a clear, unmistakable policy, adopted by Congress, to separate from railroad ownership, control, or influence, such common-carrier water lines, and such vessels, as may, when thus separated, compete with the present owning or controlling companies, except where, upon investigation, it is found by the Commission that the existing service by water, other than through the Panama Canal, is being operated in the interest of the public, is of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition on the route by water. This being so, a construction of the act must be adopted which will properly and effectively carry out the purpose of Congress. The Commission may not nullify or weaken the force of the plain intendment of the act for any reasons, however plausible they may appear to be.

The *Southern Pacific Case* was decided on February 1, 1915, and was the first case in which this Commission construed the Panama Canal act. The fundamental doctrine stated in the above quotation has expressly, or by necessary implication, been reasserted in every decision made by the Commission under the act down to the present application of the New Haven. That doctrine is sound. I can not concur either in abandoning or in substantially modifying it, as proposed in the majority report. It is elementary that the Congress is the law-making body and that it is our function to obey and to enforce the laws made by the Congress. True, we may, as we have, suggest changes in the law accordant with our view of the public in-

terest; we have delayed disposing of the pending petition for more than four years, in order that Congress might, if it thought wise, change its policy with relation to the New Haven Sound lines and other analogous rail and water situations to accord with the public desires evidenced in the hearings before the Commission. But Congress has not, in that respect, adopted the recommendations of the Commission. It is now, therefore, our plain duty to dismiss this petition, unless, by other legislation, Congress has made the Panama Canal act inapplicable to present conditions. Such result, I think, accrues from the legislation authorizing federal control and the action of the President thereunder. By the act of August 29, 1916, the President was authorized to take possession and assume control of systems of transportation. This authority was exercised by the President by his proclamation of December 26, 1917, over both railroads and "owned or controlled systems of coastwise * * * transportation."

It follows that since December 28, 1917, the New Haven's rail and water systems have been operated under federal control. The federal control act of March 21, 1918, both recognizes and reaffirms presidential control of rail and water systems, as a unified, coordinated, national system during the period of federal control. The last paragraph of section 6 expressly contemplates the expenditure of money taken from the federal treasury for the purpose of extending and improving transportation facilities on the coastwise waterways. Section 10, dealing with the rate-making power, requires this Commission in reviewing the justice and reasonableness of rates initiated by the President to give "due consideration to the fact that the transportation systems are being operated under unified, coordinated, national control and not in competition." Under these circumstances, no one would suggest that we have any power to affect the President's control and operation of rail and water systems as a coordinated, unified system for national and war purposes. Congress could not have intended that the competitive theory asserted in the Panama Canal act should, during the period of federal control authorized by subsequent legislation, be invoked to thwart or cripple the efficiency of that federal control.

Doubtless it might be contended that the prohibitions of the Panama Canal act do not extend to continued ownership of boats, provided the operation thereof could be diverted from competitive lines to noncompetitive or extension lines. See *Railway Ownership of Boat Line on Lake Tahoe*, 33 I. C. C., 426. But it is not contended that the New Haven has any substantial use for most of its owned or controlled shipping except for continued operation on the competitive [illegible] lines.

The result is that, in my view, we have no present occasion to deal at all with this pending petition. It has been allowed to sleep for more than four years; it might well continue somnolent during the period of federal control. But if, for any reason, including the fact that the case has been pending since January 6, 1914, it is thought desirable to clear our docket, the report should be limited to a brief and succinct finding that, apart from federal control, the prohibitions of the Panama Canal act are applicable. On questions of fact concerning competition, or possibility of competition, our decisions are, under the Panama Canal act, final. If our jurisdiction under the Panama Canal act has not been ousted or suspended by federal control, it should be exercised in strict accordance with the provisions of that act.

No. 4906.

IN THE MATTER OF PRIVATE CARS.

Submitted April 1, 1918. Decided July 31, 1918.

1. An important part of interstate commerce of the country is transported in privately owned cars. It is to the interest of the owners, carriers, and public that their operation should be continued, under such rules and regulations as will insure their efficient handling without discrimination against any shipper or particular description of traffic.
2. Under the situation as it exists, and under the facts and circumstances shown of record, shippers should be permitted to lease cars to transport shipments in interstate commerce from sources independent of carriers by railroad.
3. A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car, less expensive and not so difficult to operate.
4. Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts.
5. The allowance of three-fourths of a cent on the loaded and empty movements for the use of tank cars of all kinds by carriers should be increased to 1 cent a mile for the loaded and empty movements; the increased allowance should be paid for the use of live poultry, palace stock, and heater cars; and the increase should not apply to stock, coke, coal, rack, flat, box, or pocket cars, although they may be privately owned.
6. Carriers should publish in their tariffs a rule that privately owned or leased cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee.
7. Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars.
8. Reicing charges on shipments of fresh meat, packing-house products, and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; carriers should perform the service of reicing and make the charges therefor; and shippers of these products should not be permitted to perform the service of reicing their own and competitors' shipments en route, either directly or through corporations controlled by them.
9. Carriers should provide in their tariffs that private cars standing on tracks of owners shall not be subjected to demurrage charges.
10. The Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made at the hearings as to modifications in rules and practices should be adopted by the association.

John M. Faison for North Carolina shippers; *H. K. Crafts* and *W. W. Manker* for Armour & Company and controlled corporations; *M. R. Beaman* for Chamber of Commerce of Newbern, N. C.; *G. R. Williams* and *J. C. Chase* for Chase & Company; *E. D. Dow* for Florida Citrus Exchange; *J. F. Thomas* for Schrader & Company; *Lloyd S. Tenney* for Florida Growers & Shippers' League; *W. S. McDowell*, *F. D. Warner*, *J. B. Stringfellow*, and *C. A. Colcaugh* for shippers of Gainesville, Fla.; *J. W. York* and *E. H. Dennison* for shippers of Jacksonville, Fla.; *Ralph Crews* for American Cold Blast Transportation Company and Lackawanna Live Stock Express; *A. C. Moore* for Safety Car Heating & Lighting Company; *Elias Mayer* for General American Car Company; *A. P. Regal* for Seger & Sons Piano Company; and *Luther M. Walter* and *John S. Burchmore* for Morris & Company's Refrigerator Line, Cudahy & Company, Procter & Gamble Company, and various tank car owners.

Henry Bowen for Contact Process Company; *H. W. Davis* and *T. J. Norton* for Santa Fe Refrigerator Despatch Company; *Paul Garrett* for Garrett & Company; *H. B. Kooser*, *H. G. Herbel*, and *F. G. Wright* for American Refrigerator Transit Company; *Fred H. Wood* and *H. A. Scandrett* for Pacific Fruit Express; *G. W. Geary* for Kitter Elliott Erection Company; *Thomas Creigh* and *C. O. Cornwell* for Cudahy Packing Company; *Charles W. Bowden* for Pennsylvania Salt Manufacturing Company; *A. D. Peters* for Peters Mill Company; and *J. E. Robinson* for Albert Miller & Company.

R. D. Rynder, *F. H. Frederick*, and *R. O'Hara* for Swift & Company, Swift Refrigerator Transportation Company, Swift Live Stock Transportation Company, National Manufacturing Company, and Libby, McNeill & Libby; *E. Haupt* for Strobel Steel Construction Company; *O. W. O'Berg* for George A. Hormel & Company; *C. A. Jennings* for American Cotton Oil Company; *G. E. Hutchinson* for Central Commercial Company; *Douglas Cambell* and *H. E. Felton* for Union Tank Line Company; *M. H. Treadwell* for M. H. Treadwell Company; *L. F. Moore* for T. M. Chelsea Manufacturing Company and Sapulpa Refining Company; *P. E. Turner* and *G. B. Albright* for Shippers Refrigerator Car Company; *H. H. Brigham* for North American Car Company; *Jesse M. Watkins* for Mather Stock Car Company; and *Edward G. Davies* for certain fruit and vegetable shipping associations.

C. D. Chamberlin, *W. E. MacEwen*, and *J. W. Boltz* for National Petroleum Association, Peerless Transit Line, and Western Petroleum Association; *Cassoday*, *Butler*, *Lamb & Foster*, by *C. R. Hillyer*, for Live Poultry Transportation Company and Atlantic Fruit

Distributing Company; *W. S. Logan* and *J. W. Archibald* for Dairy Shipper's Despatch; *John C. Scales* for National League of Commission Merchants of the United States; *J. A. Morgan* for National Cooper's Association and National Tight Stave & Heading Association; *H. W. Marsh* for Milwaukee Refrigerator Transit & Car Company; *J. E. Considine*, *G. A. Kelly*, and *J. O. Wilson* for the Texas Company; *T. A. Gantt* and *J. W. Bingham* for Crystal Car Line; *E. H. Holden* for Glen Pool Tank Line Company; *L. F. Moore* for certain Oklahoma refiners; and *George H. Stevenson* for General Chemical Company.

George Patterson Boyle for American Refrigerator Transit Company, Chicago, New York & Boston Despatch, and Sinclair Refining Company; *Charles H. Hamill* for California Despatch Line; *F. A. Morgan* for Humble Oil & Refining Company, Magnolia Provision Company, Houston Packing Company, and Fidelity Cotton Oil Company; *Ranstead, Cavender & Kaiser* for American Private Car Owners Association, American Agricultural Chemical Company, Arche Daniels Linseed Company, Contact Process Company, North American Oil & Refining Corporation, Continental Refining Company, Garrett & Company, Gateway Car Company, Oil Seed Company, Southern Creosoting Company (Limited), Lubricating Oil Company, Lutz & Schramm Company, London-Savannah Naval Stores Company, Magnolia Provision Company, Pelican Oil Refining Company, and Titusville Oil Works; *F. J. Reichman* for the Streets Company; *J. Ralph Fascher* for Wilson Car Lines; *Benjamin C. McPherson* for Sun Company, Bay Terminal Railway, and Delaware River Union Railway; *A. B. Combs* for Marshall Oil Company; *Thomas B. Koeneke* for Indianhoma Refining Company; *B. M. Parmenter* for Lawton Refining Company; and *Robert L. Welch* and *W. E. MacEwen* for Western Petroleum Refiners Association.

Walter E. McCornack for Jacob E. Decker & Sons; *John D. Reynolds* for Western Oil Jobbers Association; *Clifford Thorne* for Western Petroleum Refiners Association and Western Oil Jobbers Association; *O. S. Keith* for Keith Railway Equipment Company; *C. B. Heinemann* for National Live Stock Exchange; *A. B. Baker* for Cleveland Provision Car Company; and *D. T. Amend* and *Frank B. Miller* for Keystone Coal & Coke Company.

F. W. Breimier for Federal Trade Commission; *Walter Condran* for Board of Railroad Commissioners and Commerce Counsel, state of Iowa; *H. M. Freer* for The Fleischmann Transportation Company; *J. J. Dougherty* for Quemahoning Coal Company; *C. A. Severance*, *Stiles W. Burr*, *A. R. Urion*, and *C. J. Faulkner*, specially for Armour Car Lines and Armour & Company; *Charles Rippin*

for Merchants Exchange of St. Louis, Mo.; *C. B. Ellis* for Gulf Refining Company; and *W. A. Schumacher* for Fruit Dispatch Company.

R. Walton Moore for Atlantic Coast Line Railroad Company; Seaboard Air Line Railway, and Florida East Coast Railway Company; *Arthur Hale*, *Wilson E. Symons*, *Bertram Walker*, and *Hugh B. Rowland* for Special Private Car Committee of the American Railway Association; *R. V. Fletcher*, *A. P. Humburg*, and *E. F. McPike* for Illinois Central Railroad Company; *W. F. Dickinson* for Chicago, Rock Island & Pacific lines; *Fred H. Wood* for Southern Pacific system; *H. A. Scandrett* for Union Pacific system; *B. E. Morgan* for New York, Chicago & St. Louis Railroad Company; *G. W. Creighton* for Pennsylvania lines; *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company; *R. W. Barrett* for Lehigh Valley Railroad Company; *C. B. Phelps*, *D. M. Goodwyn*, *E. L. Hill*, and *William Burger* for Louisville & Nashville Railroad Company; *E. S. Ballard*, *A. P. Humburg*, *H. A. Scandrett*, *L. T. Wilcox*, *F. H. Wood*, *D. P. Connell*, *Bertrand Walker*, and *F. W. Flott* for railroads generally; *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company; *John F. Finerty* for Great Northern Railway Company; and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner:*

A proposed report was prepared by the examiner, and served on the parties of record. Exceptions were filed by certain interested parties, and argument was had before us on such exceptions. Certain changes in the language of the report and suggested conclusions have been made. As so changed and modified the report is adopted as that of the Commission.

This is a proceeding of inquiry upon the motion of the Commission into the rules, regulations, and practices governing the operation of private cars on the railroads of the country. The proceeding was instituted in 1912, and the first hearing was had in November, 1913. Controversy with respect to the jurisdiction of the Commission over private car lines took the matter to the courts. *Ellis* v. *I. C. C.*, 237 U. S., 434. Later the power of the Commission to require carriers to supply equipment to shippers was challenged, and that matter became the subject of court proceedings. *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. The court cases caused delay in the disposition of this proceeding. When the matter was again taken up for consideration, it was deemed best to reopen the case, give interested parties opportunity to submit new evidence, if desired, and advise

the Commission as to changed circumstances and conditions, if any, since the case was originally submitted. Hearing was had, and the matter is now submitted for final disposition.

SCOPE OF THE INVESTIGATION.

The original order in the case provided that the investigation should be prosecuted to determine whether the minimum weights applicable to private cars, allowances paid by carriers for the use of them, and practices, rules, and regulations governing icing and handling such cars by rail carriers subject to the act, are unreasonable, unduly discriminatory, or otherwise in violation of law. Supplemental orders were issued, instituting special inquiry into the rules, regulations, etc., governing the handling of cars for shipments of fish, fruits, and vegetables from points on the lines of the Atlantic Coast Line Railroad in Florida, Georgia, and North Carolina, to points in eastern trunk line and central freight association territories.

In 1913, interrogatories were sent to all private car owners and users in the country. They were asked to show in detail the financial results to them from the operation of their cars; the loaded and empty mileage; the cost of the cars; the cost of repairs to them, etc. At the same time, interrogatories of a similar nature were sent to all rail carriers to determine the total number and different kinds of cars owned by them; the empty and loaded mileage; the amounts paid to private car owners; cost of repairs, etc. The returns show operations for the year 1912. When the proceeding was reopened, similar interrogatories were again sent, with a view to securing results of operation and other data for each year from January 1, 1913, to January 1, 1918. Answers were received, and the information secured will be discussed hereinafter.

ORIGIN AND DEVELOPMENT OF PRIVATE CARS.

For the purpose of this discussion, a private car will be considered as one not owned directly by a railroad company. When railroads were first chartered and built in this country, they were simply toll roads. The shipper furnished the vehicle and the railroad company the road and the motive power. The shipper paid for the use of the roadbed, rails and motive power. By 1845, however, this manner of conducting railroad transportation had completely changed, and the railroad companies furnished all the facilities used in transportation. This continued until shortly after the Civil War, when fast freight lines were organized for the movement of through cars over various lines of railway in the country. They were owned by independent companies or corporations. The cars were specially constructed with movable trucks, so that the body of the car and its contents could be moved from one railroad to another without un-

loading, as was the general custom. The tracks of the different railroads often were, at the time, of different gauges. These car lines quickly became popular and profitable, and were in a short time absorbed by the railroad companies. There was some use of privately owned cars as early as 1867, but it was not until about 1885 that sufficient of them were in use to make them a factor to be reckoned with in the transportation problems of the country. In 1889, an investigation of private cars and car lines was made by the Commission, and the results are discussed in the annual report to the Congress of that year. An investigation into the relations of railways and the owners of private cars was made by the Commission in 1892, which is referred to in its annual report of 1893. The early reports of the Commission contain discussions respecting rates on oil in tank cars, as compared with oil in barrels, but the present proceeding is the first general investigation undertaken by the Commission into the ownership and operation of all private cars, the relation of the owners of such cars with the railroads of the country, and the relation of owners to each other and the public.

In the development of freight traffic in the different sections of the country it became evident that many commodities might be transported to much greater advantage in certain kinds of cars especially adapted to the character and peculiar qualities of the particular articles, than in the ordinary cars furnished by carriers. The latter were slow to respond to the demand for improved cars of special pattern, and frequently failed to provide them. Hence, by agreement between shipper and carrier, the former undertook to provide his own cars for the transportation of his particular articles. In analogy to the custom that prevailed between connecting carriers in respect to the use of each other's cars, the railway company became the hirer of the shipper's cars, paying for their use on the basis of a certain amount per mile on the loaded, or loaded and empty, movements. Initiated in a small way with respect to a few articles, the development has been in the direction of rapidly expanding use of private cars. It became necessary that some industries should have a constant and adequate supply of cars in order to conduct business on a large and economical basis. Articles of a perishable nature required prompt movement; some of such articles moved during short periods of each year; and there were demands for cars of special type from many different sections of the country which the carriers could not, or did not, supply. It has also come about that private cars now in use are not owned by shippers alone. They are owned in large numbers by separate corporations, who make their arrangements for the use of the cars with shippers, and procure from the railroads the payment of mileage. Many of these companies lease cars to railroad

companies, receiving only the mileage allowance for their use; others lease their cars to carriers for an agreed monthly rental, the latter to keep the cars in repair; still others lease to shippers at an agreed rental per month, and credit the mileage earnings to the latter. Many of these concerns are car builders, who supply cars of special design to shippers on order. They have facilities for repairing their cars located at convenient points in different parts of the country.

For convenience, the car owners who furnished information in answer to the interrogatories sent out in 1913, were divided into four classes, as follows: Class A, independent companies not owned or controlled by railroads or shippers; class B, incorporated car lines owned or controlled by railroads; class C, incorporated car lines owned or controlled by shippers; and class D, industrial concerns whose cars are owned by them and are used in connection with and incidental to their commercial activities. In 1913, answers were received from 641 private car owners. Under the grouping, they divide as follows: Class A, 37 owners; class B, 6 owners; class C, 22; and class D, 576. Car ownership changes frequently, and it is difficult to make an exact analysis of the number of cars or owners at any given date. New cars are constantly put into service, the old cars are scrapped or wrecked, and new industries are established in various parts of the country which require cars of their own to conduct their business with efficiency.

January 1, 1918, there were approximately 1,000 owners of private cars of all kinds used in commercial service in this country, not including railroad companies. The number owned by each ranges from 1 to 18,000. According to Boyd's I. C. C. A-826, effective December 14, 1917, a publication designed to show gallonage capacities of tank cars of the country for the computation of freight charges, there were 706 owners of tank cars, not including railroad companies. On January 1, 1913, there were shown by the same publication, 271 owners. No tabulation of the answers to interrogatories sent out in January of this year has been made to indicate the number of owners in groups as was done in 1913. It may be said that an examination of the returns, in a general way, shows that there has been no substantial change in the number of owners in the different groups since January 1, 1913, except a large increase in class D owners. None of the returns includes cars that are used about industrial plants for interplant switching, those used by contractors in connection with construction work, cars in the hands of manufacturers and builders, or cars which may be used in interstate commerce but which in fact are not so used. The following table shows the number of the several kinds of freight cars owned on January 1,

1913, by private interests, compared with like cars owned by railroads:

Kind of cars.	Owned by private interests.	Owned by railroads.	Total.
Refrigerator	54,582	48,926	103,508
Tank	30,039	9,150	39,189
Stock	21,712	71,299	93,011
Coal and coke	24,140	801,042	825,182
Heater	510	648	1,158
Live poultry	891	114	1,005
Other kinds	5,305	1,370,532	1,375,890
Total	137,179	2,301,711	2,438,890

There are no statistical data compiled by the Commission previous to 1889, which give reliable information as to the number of cars owned by other than railroad companies, nor, in fact, the number of different kinds of cars available for use in interstate transportation actually in operation. Poor's Manual shows that in the year 1890 there were 3,398 refrigerator cars owned by railroad companies. On October 1, 1889, railroads owned 1,342 tank cars. *Ind. R. Ass'ns. Tit' vl. and Oil City* v. *W. N. Y. & P. R. R. Co.*, 5 I. C. C. 415, 435. As shown above, on January 1, 1913, railroads owned 48,926 refrigerator cars, and 9,150 tank cars. January 1, 1918, railroads owned approximately 65,000 refrigerator cars and 11,277 tank cars.

In 1889, there were 6,552 privately owned tank cars; in 1912, 30,022; and in 1918, approximately 70,000. It was stated at the hearing in February of this year that there were about 6,000 tank cars under construction. The number of tank cars now privately owned is an approximation because it is difficult to ascertain the exact number. Ownership constantly changes, new cars are added, and there is some duplication in the reports for the reason that both the owner and lessee sometimes report the same cars. Boyd's I. C. C. A-826, and supplements above referred to, shows a total of 85,260 tank cars in use in this country. Of these, 12,217 are owned by railroad companies. An examination of this publication discloses some duplications. From the figures obtainable from answers to interrogatories, and estimates from other sources, there appear to have been about 67,000 privately owned tank cars on January 1, 1918. Allowing for duplications in Boyd's publication, and for failure to report by owners to questions sent out by the Commission, it is probable that 70,000 is substantially the correct figure.

In 1910 there were approximately 50,000 privately owned refrigerator cars; in 1912, 54,582; and on January 1, 1918, approximately 65,000. These figures are approximates, because it is difficult to keep up with the constant changes of ownership, cars that are

added, and those that are scrapped each year. For example, in February of this year, Swift & Company were manufacturing at their shops in Chicago four new refrigerator meat cars every day.

January 1, 1913, there was a total of 137,179 of all kinds of cars owned by private interests. This includes those owned by railroad-owned car lines. January 1, 1918, there were approximately 135,000 tank and refrigerator cars so owned. Add to this 65,000 other privately owned cars, including stock, coal, poultry, heater, palace stock cars, and box cars, and the total ownership on that date was approximately 200,000. At a conservative estimate, the amount of money invested in these cars is $250,000,000. In addition to this, large sums of money have been invested by owners in the construction of repair plants, side tracks, etc.

There has been a large increase of privately owned cars in the last three years. This increase is relatively larger than for any previous similar period. This is particularly true of tank cars. During that period there has been an unprecedented shortage of cars on railroads of the country, caused in part by the enormous increase in demand for certain articles, due to the war; and also, in part to congestion of cars along the North Atlantic seaboard, and at important terminals in official classification territory.

The congestion caused much slower movement of cars. It is estimated by one large car owner that it now requires three cars to perform the service that was performed by one in normal times. It quickly developed during the shortage that if large owners of private cars were to do the same or a greater amount of business than in previous years, it would be necessary for them to buy or manufacture more cars and put them into service, and many of them have done so.

PRIVATE CAR LINES.

Railroad-owned car lines are in a different situation than those owned or controlled by shippers or independent companies. Examples of such lines are the Pacific Fruit Express, owned jointly by the Union Pacific and Southern Pacific systems; the Santa Fe Refrigerator Despatch Company, owned by the Atchison, Topeka & Santa Fe Railway Company; the American Refrigerator Transit Company, owned by the Missouri Pacific and Wabash in the ratio of 76 to 24, respectively; and the Chicago, New York & Boston Refrigerator Company, owned by the Grand Trunk Railway system. The cars owned by these companies are interchanged with carriers other than the owners, exactly the same as all railroad cars, except payments for their use, and the cars are "at home" on the lines of the owning carriers. They are more properly to be termed railroad cars. All charges to the shipper in connection with the

operation of the cars of these companies are published in tariffs of the owning carriers and concurred in by their connections. The officers of the railroad companies are generally officers of the subsidiary car lines. The employees of the latter ride on passes, and freely use the railroad telegraph lines. It is stated in evidence that these lines were organized chiefly for the purpose of looking after perishable freight originating on the lines of their owners, and that they are really a separate department of such carriers. Separate incorporation, it is asserted, is a convenience in accounting and operation. It seems quite probable that one strong inducement for the incorporation of some of them was that at the time mileage earnings were much greater than had been received from the per diem allowance, which in 1902 was 20 cents.

The Merchants Despatch Transportation Company, formerly owned by the New York Central, and the Central Fruit Despatch Company, formerly owned by the Illinois Central, are not now operating. The cars owned by them are now operated directly by the railroad companies.

Some of the carrier-owned lines now in operation receive nothing but mileage earnings, and the earnings from refrigeration, where they perform the service for the owning companies. Others are paid a commission, usually 12½ per cent of the gross revenue received by the carriers with which they have contracts, on business solicited and secured by their employees, and routed via the contract carrier lines. Examples of these are the American Refrigerator Transit Company, and the Chicago, New York & Boston Refrigerator Company. Solicitors employed by these car lines are experts, and advise farmers and other shippers as to the production of more varied and larger quantities of fruits and vegetables, and assist and advise shippers of dairy products in various ways to prepare shipments for transportation, as to loading, etc. They are comparable to soliciting forces that have been employed by carriers which have perishable freight departments of their own, such as the Chicago, Burlington & Quincy and the Pennsylvania.

With respect to the commission paid these car lines, there is no evidence which permits of a comparison between the amount paid them and the cost of soliciting dairy products and other perishable freight by carriers owning their own cars, to determine whether they are excessive. The figures submitted by the car lines which receive commissions do not show that their earnings are more than reasonable, considering investment and expenses. For example, the Chicago, New York & Boston Refrigerator Company reports that its percentage of return on investment, less operating expenses, maintenance, salaries, taxes, and depreciation, was 6 per cent in

1909; 5 per cent in 1910; 4.5 per cent in 1911; 5.7 per cent in 1912; 2.8 per cent in 1913; 1.7 per cent in 1914; a deficit of 0.63 per cent in 1915; 1.9 per cent in 1916; and a deficit of 3.1 per cent in 1917. The American Refrigerator Transit Company has not received a return on its investment except five years in the last ten, and not to exceed 2.52 per cent in any year of that period.

It does not appear that connecting lines pay commissions to secure shipments in cars owned and operated directly by carriers. The Chicago, New York & Boston Refrigerator Company, as before stated, has an arrangement with the Grand Trunk system. A shipment reaching New York City over the Lehigh Valley, originating on the Grand Trunk, if solicited by the Chicago, New York & Boston Refrigerator Company, would entitle the latter to a commission on the entire movement, the Lehigh Valley having received a shipment, without individual solicitation, that it might not have secured.

In any event, these charges do not affect the amount paid by the shipper for the transportation, and because the car lines are owned by railroad companies and the earnings are a part of the returns from the entire service of the company, they are not directly at issue in this proceeding. The evidence is not sufficient to determine any question with respect to the propriety of commissions and their payments, as described.

At this time, when the railroads of the country are under unified control, paid soliciting forces for any carrier have little office to perform. Whether as industrial agents they may continue to operate in the interest of more and a wider diversity of production is another question not within the scope of this investigation or the Commission's authority. Under such circumstances, the question of payment of commissions of the nature referred to will not be further considered herein.

With reference to car lines owned by shippers, it may be said that generally they are not engaged in the car leasing business. The cars they own are used to transport their shipments, and it is only occasionally that cars are leased to others. However, there was one exception to this general rule. When this proceeding was instituted, a subsidiary of Armour and Company, of Chicago, Ill., and Kansas City, Mo., known as Armour Car Lines, supplied the owning company with cars for shipment of its fresh meats and packing house and dairy products, and also furnished cars to carriers and shippers for transportation of fruits and vegetables. During the pendency of this investigation, and on November 1, 1914, the Armour Car Lines sold to Armour and Company all of the meat refrigerator cars owned by it, and the shipper has operated them since. By contract dated November 5, 1914, the Armour Car Lines sold to the Fruit

Growers Express, Incorporated, all of the fruit and vegetable refrigerator cars owned by it. The icing stations owned and operated by the Armour Car Lines at East St. Louis, Ill.; Columbus, Ohio; and Altoona, Pa., with its interest in other stations at Del Ray, Mich.; Havelock, Ont.; Nashua, N. H.; and Newport, Vt., were sold to the Utility Operating & Supply Company, Incorporated. Armour and Company controls the Fruit Growers Express under the following conditions: The stockholders of the Fruit Growers Express, except directors' qualifying shares, are the same as the stockholders of Armour and Company, and they hold their stock in the same proportion as the stockholders of Armour and Company hold stock in that company. It is insisted that the fact that the stockholders of the two companies are the same does not make one the subsidiary of the other, as stated in the report proposed by the examiner. Technically this is true, but the fact remains that the Fruit Growers Express is controlled by Armour and Company. The offices of the former are at the Union Stock Yards, Chicago, in Armour and Company's building. The Utilities Operating & Supply Company is controlled in the same way by Armour and Company. Armour and Company now conducts in its own name the meat transportation business in its own cars that was formerly done by Armour Car Lines; the Fruit Growers Express has taken over the fruit and vegetable transportation business that was formerly conducted by Armour Car Lines; and the Utility Operating & Supply Company now controls and operates icing plants that were formerly owned and operated by Armour Car Lines. In other words, the three companies are controlled by Armour and Company, and have taken over the business that was formerly done by Armour Car Lines. The Fruit Growers Express leases its cars to carriers for the most part on agreed bases, and performs refrigeration service at rates named in such carriers' tariffs.

There is another class of car lines which deals almost exclusively with carriers. Reference is had to the Mather Horse & Stock Car Company and the Doud Stock Car Company, which are representative of the class. These companies own stock cars which are leased to railroad companies under contracts as to payment for their use, or their cars are secured by carriers on payment of 6 mills per mile. Much the larger number of these cars are operated under the mileage allowance. Shippers are in no way interested in the arrangements that are made between the owner of such cars and the carrier. The shipper secures such cars on request to the carrier. When used by carriers they are really railroad cars and are treated as such by connections, and oftentimes the lettering on the cars is obliterated and the name or initials of the leasing carrier placed thereon. Some cars owned by companies of this class are leased to shippers under con-

tracts, but the charges therefor are not uniform. The amount paid by carriers for the use of cars of this class which is now under control by this Commission, does not affect freight charges paid by shippers, or practices of carriers with reference to such shippers. However, this record shows that under present conditions, and, indeed for many years, the mileage allowance is not and has not been on a remunerative basis to the owners. The evidence is not sufficient to determine what payment should be made to this class of owners, who derive no benefit from the use of their cars except the mileage or other payments. The carriers and this class of owners should, if possible, reach an agreement as to the reasonable payment for the use of cars.

DIVERSITY OF USE AND MAKE OF PRIVATE CARS.

There are at least 31 different liquids regularly transported in tank cars, not including the different kinds and grades of acids and oils. There are 7 acids and 21 grades and kinds of petroleum oils, making an aggregate of 59 varieties of liquids. Cars used to transport the different liquids can not be interchanged readily, that is to say, a tank car loaded with fuel oil with an asphalt base can not be reloaded with refined oils, such as gasoline or kerosene, nor with edible oils, such as cottonseed or coconut, without thorough cleaning at an expense of from $5 to $35 per car. A car in which has been transported any of the petroleum oils can not be used for molasses or other edible liquids without thorough cleaning to remove every vestige of oil and odor. Some acids require peculiarly constructed cars. A car for tannic acid must be coated on the inside with acid resisting material and all fittings must be of brass. Muriatic acid requires a wooden lined tank. Wine cars are mounted with a steel tank, lined on the inside with special enamel, surrounded on the outside with a wooden tank, with insulating material between it and the steel, to preserve the contents from deterioration during transportation; and casing head gasoline cars are insulated so as to preserve a uniform temperature, and are fitted with special dome-head arrangements and safety appliances. A tank car for transportation of asphalt and other heavy oils requires heater coils in order to liquefy the contents for unloading. Some tank cars are constructed with compartments so that two or more grades of oil may be transported at a time. Special loading and unloading facilities are necessary for oil shipments. It is necessary to force some oils out of the cars by steam pressure, others by the use of pumps, and from still others the liquid flows out by gravity.

Dairy and meat products may not safely be transported in a refrigerator car in which fish, sea food, or other odoriferous articles

have been carried, without thorough cleaning and disinfecting. A refrigerator for the transportation of carcass meat is peculiarly constructed. The roof is braced to support racks from which are suspended hooks to hold the meat. It is more thoroughly insulated than the ordinary refrigerator. The car is cooled by means of iron brine tanks in each end, which are filled with crushed ice and salt, insuring a lower temperature than can be secured in a car with wooden bunkers filled with cake ice without the use of salt.

Palace stock cars fitted with stalls for the shipment of blooded stock; stock cars with feeding racks and watering troughs; live poultry cars with 128 coops, so wired and arranged that poultry may be fed and watered and otherwise cared for en route; heater cars with stoves or other heating apparatus for shipment of potatoes in winter; rack cars for shipment of bark, barrels, staves, and coke; platform cars for shipment of car bodies, car trucks, and electric cars; flat cars for boilers, machinery, tanks, trucks, vans, etc.; and special slot or "pocket" cars for large sizes of plate glass are some of the private cars regularly used for special purposes.

The perfection of the construction of the refrigerator car has in recent years led to its wider use. Originally it was designed for transportation of perishable traffic in the warm months. It has become quite as important an agency of transportation of traffic in cold months, to keep the articles contained in it from freezing. A modern insulated car will transport articles for longer distances in cold weather without damage than the ordinary box car. Refrigerator cars of modern make are now demanded by shippers who have come to realize that their shipments are delivered in much better condition, with less loss and damage, than was the case a few years ago with the cars of the earlier type. Not only is the demand for the best cars of this character, but it is highly important that they shall be kept in as near perfect repair as possible.

ALLOWANCES PAID BY CARRIERS.

Previous to 1902, the payment for the use of all cars in railroad service was on a mileage basis. In that year, for the use of railroad cars on foreign lines, a per diem basis was established, beginning at 20 cents, with a penalty of 80 cents per day if the car was detained more than 30 days; from July, 1906, to July, 1907, the per diem charge was 25 cents, with a penalty of 75 cents per day on cars held for more than 30 days; July, 1907, to March, 1908, 50 cents per day; March, 1908, to March, 1910, 25 cents; March, 1910, to August 1, 1910, 30 cents; August 1, 1910, to Jan. 1, 1913, 35 cents; January 1, 1913, to January 1, 1917, 45 cents; from January 1, 1917, to March 31, 1917, 75 cents; and from March 31, 1917, to date, 60 cents.

Allowances paid to private car owners have always been on a mileage basis. From 1867 to 1873, the rate was from 1½ to 2 cents per mile on all cars; 1873 to 1877, from 1 to 1½ cents; in 1877, it was made from ¾ of a cent to 1 cent; in 1893, an allowance of 1 cent was fixed for refrigerator cars west of Buffalo, N. Y.; in November of that year, the rate was made 6 mills on all cars except private refrigerators, which were allowed 1 cent by western carriers and ¾ of a cent by eastern carriers generally. There were some modifications of the allowances in the east. For example, in 1909, refrigerator car owners were allowed 1 cent on movements from St. Louis to the Illinois-Indiana state line, and the Wabash Railway paid 1 cent on movements to Buffalo. There were certain other exceptions, not necessary to be stated. On October 1, 1917, the allowance for use of refrigerator cars between all points east of the Mississippi River became 1 cent. At this time, the allowance for refrigerator cars is 1 cent per mile on the loaded and empty movements between all points east of El Paso, Tex., Albuquerque, N. Mex., Salt Lake City, and Ogden, Utah. The territory west of the described line is known as the transcontinental zone. In that zone, on shipments requiring refrigeration in private cars for distances of 800 miles or less, the payment is 6 mills per mile; excess over 800 miles, ¾ of a cent; when loaded with freight not requiring refrigeration, 6 mills, regardless of distance; and when moving empty, no allowance. The reasonableness of the allowances in the transcontinental zone is the subject of complaint in Docket No. 10026 and subnumbers, heard in connection with this proceeding, and will be disposed of in a separate report.

The allowance on live poultry cars is generally ¾ of a cent, although there are a few exceptions when 6 mills is paid. On palace stock cars, except when moved in passenger trains, the allowance is on the basis of 6 mills per mile, with the exception of many railroads in the southeast, which allow ¾ of a cent. The allowance for tank cars is uniformly ¾ of a cent for loaded and empty movements. For use of all other cars, including coal, coke, stock, and box cars, the allowance is 6 mills per mile. None of the allowances include movements within the switching limits, as defined by carriers, within terminals.

OPERATION OF PRIVATE EQUIPMENT.

From the fact that private car owners have an interest in the prompt movement of their cars, records submitted in this case show that such cars move more rapidly, and also move empty to a greater extent than the same kind of cars owned by carriers. From exhibits submitted it is shown that private cars on 127 railroads of the country for the year ended June 30, 1912, made empty and loaded mileage as follows:

Kind of cars.	Loaded.	Empty.	Loaded.	Empty.
	Miles.	*Miles.*	*Per cent.*	*Per cent.*
Refrigerator	705,157,018	373,021,082	65.4	34.6
Tank	109,962,847	105,146,838	51.1	48.9
Live poultry	5,894,886	5,884,957	50	50
Stock	76,223,720	71,869,154	52.1	47.9
Coal and coke	104,562,271	103,337,181	50.8	49.7
Other private cars	9,217,523	6,316,004	59.3	40.7
Total	1,013,038,265	665,575,216	60.35	39.65

For the same year the loaded freight car mileage of steam railroads in the United States amounted to 69.41 per cent of the total, and the empty mileage 30.59. These figures do not include caboose mileage, but do include all freight cars in revenue service, both railroad cars and private cars. They also include company freight. It will be observed that the loaded mileage of all freight cars is about 15 per cent greater than that of private cars. The two lots of cars are not fully comparable, however, for the larger movement of private cars is for perishable freight, which is everywhere given preferred service, but the comparison is worthy of consideration in connection with other facts and circumstances. The following exhibit, compiled from returns received from carriers in 1913, shows a comparison of loaded and empty mileage of refrigerator cars owned by shippers and those owned or controlled by railroad companies over certain representative railroads, for the year ended June 30, 1912:

Railroad.	Cars of lines owned or controlled by shippers.		Cars of lines owned or controlled by railroad companies.	
	Loaded.	Empty.	Loaded.	Empty.
Chicago & Erie	50.9	49.1	72.9	27.1
Erie	52	48	77.5	22.5
P. R. R.	51	49	63.5	36.5
P., C., C. & St. L.	51.6	48.4	59	41
C. & N. W.	54.6	45.4	79.9	20.1
C., B. & Q.	63	37	80	20
C., M. & St. P.	53.9	46.1	77.3	22.7

It will be noted that in every instance the percentage of the loaded mileage of the railroad-owned car lines is greater than that of the car lines owned by shippers.

A comparison of the per cent of loaded mileage of refrigerator cars operated by railroad-owned car lines on the rails of the owning railroad with that of refrigerator-car lines operated by shippers is as follows:

	Per cent.
Loaded mileage on the Missouri Pacific system:	
Made by cars of the American Refrigerator Transit Company	66.7
Made by cars operated by shippers—	
Armour Car Lines	60.8
Cold Blast Transportation Company	52.4
Cudahy Refrigerator Line	56.8
Cudahy Milwaukee Refrigerator Line	53.9
Kingan Refrigerator Line	76.7
Morris & Company	63.9
St. Louis Independent Packing Company	50.7
Swift Refrigerator Line	61.3
Loaded mileage on the St. Louis-San Francisco Lines:	
Made by Frisco Refrigator Despatch cars	72.3
Made by cars operated by shippers—	
Armour Car Lines	68.6
Cold Blast Transportation Company	56.6
Cudahy Refrigerator Line	59.1
Cudahy Milwaukee Refrigerator Line	61.5
Kingan Refrigerator Line	67.8
Morris & Company	73.7
St. Louis Independent Packing Company	54.8
Swift Refrigerator Line	62.2
Loaded mileage on New York Central lines:	
Made by cars of the Merchants Despatch Transportation Company	80.6
Made by cars operated by shippers—	
Armour Car Lines	56.6
Cold Blast Transportation Company	51
Cudahy Refrigerator Line	50
Cudahy Milwaukee Refrigerator Line	51
Kingan Refrigerator Line	52
Morris & Company	50
St. Louis Independent Packing Company	50
Swift Refrigerator Line	51.4

It is further shown by the returns that the loaded mileage of the Pacific Fruit Express over the Union Pacific-Southern Pacific lines was 70.3 per cent, and of the Santa Fe Refrigerator Despatch Company over the Santa Fe lines 83.6 per cent.

The figures are taken from the returns to the Commission for the year 1912, which may be considered as a normal year, so far as car supply and movement are concerned.

From figures secured from answers to interrogatories sent out in 1918, the following tables have been compiled:

Year.	Refrigerator mileage reported by carriers.				Refrigerator mileage reported by private owners.			
	Loaded.		Empty.		Loaded.		Empty.	
	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.
1913.....	813,726,169	63.9	459,644,951	36.1	757,107,374	93.1	56,112,042	6.9
1914.....	866,038,169	64.6	474,557,129	35.4	689,729,731	76.7	194,881,338	23.3
1915.....	883,858,538	61.1	562,079,448	38.9	553,218,691	62.0	339,647,637	38.0
1916.....	926,338,951	63.4	534,636,239	36.6	477,133,588	56.7	362,447,157	43.2
1917.....	918,768,791	62.6	548,318,009	37.4	464,603,136	56.6	356,835,725	43.4

Year.	Tank car mileage reported by carriers.				Tank car mileage reported by private owners.			
	Loaded.		Empty.		Loaded.		Empty.	
	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.	Miles.	Per cent.
1913.....	165,884,990	51.5	156,006,777	48.5	99,406,702	50.7	96,850,771	49.3
1914.....	173,660,758	51.0	166,890,852	49.0	101,871,368	50.3	100,699,158	49.7
1915.....	207,965,764	51.1	199,226,862	48.9	129,912,823	50.7	125,885,317	49.3
1916.....	273,025,719	51.1	261,200,168	48.9	201,185,256	50.6	196,739,978	49.4
1917.....	340,473,778	51.2	324,603,629	48.8	259,634,967	50.6	253,786,582	49.4

The figures are for the private car lines and owners and railroads reporting. They do not contain all the mileage, loaded or empty, made by all the refrigerator or tank cars in the country. They are, however, representative, and may be taken as showing the situation with substantial accuracy.

It will be observed that the loaded and empty mileage made by privately owned refrigerator cars in 1913 is at variance with that of the other years. The reason for this is that the figures submitted for that year by 95 per cent of those making returns did not segregate the loaded and empty mileage movements. The figures are based on the 5 per cent that did report such movements, and are, therefore, not reliable, and may be discarded. To a less extent the same situation exists with respect to the year 1914.

It will also be observed that the percentages of loaded to empty movements are substantially the same for the entire period of six years. This shows that whether there be a shortage of cars or not, the empty movement of refrigerator cars under the system of their operation now in effect is substantially constant. The inability of carriers to secure return loads and the insistence of shippers for prompt return of their cars are influences that affect the result.

The percentage of loaded mileage of railroad controlled refrigerator cars is relatively high. In many cases it is higher than the average of all loaded freight car mileage of the country, 69.41 per cent. The loaded and empty mileage of refrigerator cars owned and operated directly by railroad companies was not obtainable, but so

far as cars owned or operated by their car lines are concerned, the records show reasonably efficient operation. These cars appear to be used to about the same extent as ordinary box cars. Refrigerator cars are used primarily for perishable freight, but when suitable freight of a general character is available for return loading, they are utilized. Most perishable freight moves from the west, southwest, south and southeast to the northern and northeastern sections of the country. There is very little perishable freight available for return loading. Railroad car lines utilize their cars to as great an extent for return loading as possible. Private car owners object to return loading of their cars, if by so doing, the return movement is delayed. There are many articles that can not be loaded into refrigerator cars, especially meat cars, because of odor, or because the dampness in the car would not permit of such loading. The tariffs of carriers designate a list of articles that are not to be loaded into refrigerator cars, and also contain general inhibitions as follows:

Articles not to be loaded in standard refrigerator cars, meat cars or standard ventilator cars: Any freight liable to damage from dampness or rust; and freight the odor of which may unfit the cars for transportation of perishable freight; and any rough or heavy freight that may damage car walls or floors.

Then follows a list of 24 commodities as the principal ones within the restriction above cited. Tank cars are not generally loaded for return movement, and with some exceptions move empty half the total mileage. The Union Tank Line Company serves so many concerns with numerous refineries and stations in all parts of the country that it occasionally happens that loads may be found for movements in both directions. As a rule, private cars designed to transport acids, vinegar, wine, etc., move empty on the return.

PHASES TO BE SPECIALLY CONSIDERED.

In an investigation so general as this, where all questions with respect to the operation of private cars on all railroads of the country are to be taken into account, it became necessary to specify the more important phases of the matter to be considered. In the order that was issued in January, 1918, certain points were designated as those to be given special consideration, and to them the evidence taken at the last hearing was in the main directed. In brief, they include the question of the propriety of a service or separate charge, in addition to the freight rate, when special equipment is transported by carriers; to ascertain, in case a carrier has no equipment of the kind demanded by a shipper, whether the carrier should secure the same from an owner of such car, or whether the shipper should be permitted to make the arrangements with the

owner, and thus supply cars for his own use; to determine whether, if private car owners are permitted to continue to furnish cars to shippers and make charges direct to them, the charges so made shall be published in tariffs of carriers; to determine what compensation should be paid by carriers to the car owner, lessor or lessee for the use of cars furnished, and the manner in which charges shall be determined; to ascertain what relation investment in private cars, interest, cost of operation, maintenance and depreciation should bear to the allowance to be paid by the carrier for the use thereof; whether charges for refrigeration should be a stated sum for the service, or named in cents per 100 pounds of freight hauled, or should be based on the cost of the service, including labor, cost and weight of ice and salt, etc.; the propriety of the line-haul carrier performing all refrigeration service and making charges therefor; whether rules and practices of carriers as to minimum weights and charges, mixtures, part lot shipments, return of empty containers, etc., operate to unduly prefer or prejudice any shipper or shippers, or any particular description of traffic; to investigate questions respecting demurrage; and to determine whether the Master Car Builders' Association rules, with respect to private cars, should be filed with the Commission and observed by carriers accordingly.

The different phases of the case will be considered in detail, not necessarily in the order listed above, nor in exact terms as stated, but in such a manner that each will have such discussion as its importance and the facts warrant.

THE DUTY OF CARRIERS.

It is well-settled law that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. The general duty of carriers at common law, and under the act, is to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations. It has been held that in the absence of discrimination the power to enforce the duty does not reside with the Commission. *Pennsylvania R. Co.* v. *United States*, 227 Fed., 911; *United States* v. *Pennsylvania R. R. Co.*, 242 U. S., 208. In this proceeding the question of where the power resides to enforce the duty is not necessarily involved. In section 15 of the act it is provided that if the owner of property transported directly or indirectly renders any service connected with transportation, or furnishes any instrumentality therein, the charge and allowance therefor shall be no more than just and reasonable, and that the Commission is empowered to determine what is a reasonable charge as a maximum to be paid by the carrier or carriers for the service rendered, or for the use of the instrumentality furnished.

An amendment to section 1 of the act, approved May 29, 1917, provides as follows:

> The Commission shall, after hearing, on a complaint or on its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier, and the penalties or other sanctions for nonobservance of such rules.

The Congress has thus recognized the use of privately owned cars in transporting the commerce of the country, and has provided for their control by the Commission through rules and regulations of carriers hauling them.

For more than 30 years privately owned cars have been extensively used to transport commodities in interstate commerce. They came into use originally because the railroads would not, or did not, supply them in sufficient quantities to meet the demand. Practically all carriers have refused to furnish tank cars for transportation of oil and other liquids, or cars with brine tanks and racks for transportation of carcass meat. There are certain exceptions to this rule which will be considered later. Refiners of petroleum oils with substantial unanimity state that as a practical matter carriers could not furnish tank cars in a manner to insure their efficient use. The packers, who are the largest users of refrigerator cars, including meat cars, state that they are perfectly willing that carriers should own all cars used by them, "provided they are insured at all times an adequate supply." The proviso qualifies their acceptance of the principle to the extent of practically nullifying it. If all cars were owned and furnished by carriers, in times of shortage the packers, as well as all other shippers of like traffic, would be entitled to no more than their fair share of all cars available. No class of cars in railroad service is used more effectively than the cars owned by large shippers. They have organizations of men to see to it that their cars move as promptly as possible, both loaded and empty. The carriers of the country could not as effectively handle the entire refrigerator and tank-car equipment as is now done by the intervention of private owners. The car lines have forces of experts to watch the crop prospects and to advise as to the needs of particular sections of the country, to secure cars and see that they are on hand for the transportation of all sorts of products in refrigerator cars. If there is a crop failure in one section of the country, the cars are sent to other sections, and are kept actively in use to the highest degree possible. The oil refiner produces certain kinds of oil and desires to reach certain customers. No carrier could inform itself as to his needs and insure that he would have the kind and number of cars to enable him to conduct his business economically and effi-

ciently. If private ownership or control of cars of particular types results in greater economy and more efficient use, the whole public is to that extent benefited. As before stated, nearly 200,000 cars regularly used in interstate commerce are now held in private ownership. According to the statistical abstract compiled by the Commission for the year ended July 1, 1916, there were 2,313,300 freight cars of all kinds owned and used by carriers of the country. It is probable that this amount is short about 20,000 of the number owned by carriers on January 1, 1918, and assuming that on that date the total equipment of railroad-owned cars was 2,500,000, it follows that about 8 per cent of that number is privately owned.

In the beginning, carriers could no doubt have insisted upon their right to furnish all equipment. They did not do so, and in the course of years there has grown up a system of private ownership of such magnitude and importance that it must be reckoned with as an existing condition. Some years ago certain car lines were owned by shippers who received commissions from carriers transporting their traffic. This was unlawful as a concession to such shippers from published rates. No such commissions are paid at this time, nor have there been for many years. It also appears that some years ago carriers paid excessive allowances for use of cars to certain shippers, which amounted to rebates, but so far as this investigation has shown, there are no payments of that character now being made. The handling of private cars is now on such a basis that there does not appear to be any unlawful practice, so far as payments by carriers to shippers are concerned.

There is a demand upon the part of certain shippers of petroleum oil that the Commission require carriers to furnish tank cars on request, and that the supply of such cars be subject to ordinary rules of equitable distribution. The contention is that if the Commission has not the power, it should be given it by proper legislation.

The system of the use and supply of private cars that now exists can not be at once and radically changed, without serious consequences to shippers, carriers and the public. At the hearings an endeavor was made to secure evidence with respect to normal transportation conditions. The abnormal conditions of last fall and winter are admittedly not such as would indicate what would be just and reasonable practices, as a general rule, for carriers, shippers, private-car owners or the public.

HOW SHOULD A SHIPPER SECURE CARS?

As a general principle, a shipper of traffic over the railroads of the country ought not to be required to deal with any other than the carrier. If the carrier has not the kind of a car in general use that

is demanded by a shipper, the most simple and direct method is for the former to secure it from some source and furnish it, but the custom has been otherwise with respect to certain kinds of cars. In many cases, shippers are under compulsion to furnish cars by reason of carriers' failure to supply them upon request. In practice, the shipper either buys the cars used by him, or rents them from concerns engaged in the business of supplying cars. If a request were preferred to a carrier for a kind of car it did not own, considerable delay might occur before it could be secured. To a shipper of perishable products or a shipper who is bound by a short time contract, such delay might cause serious loss. So far as the carrier is concerned it can make no difference whether the shipper is owner or lessee. So far as the shipper, or the relation of one shipper to another is concerned, there may be a marked difference between an owner and a lessee.

Some car companies engaged in the business of manufacturing cars and supplying them to shippers for use in transportation have and take a vital interest in the movement of such cars by carriers. They enter into contracts with shippers to supply them with all the cars needed for a certain period, usually a term of years. Men are employed whose duty it is to keep posted as to the location of all cars, so that demands of patrons may be most expeditiously and economically met. In many instances they require junction reports as to passing of cars sent to them, and they collect mileage due and credit it to the lessee's account. There can be no doubt but that this method of handling the business leads to a highly efficient use of cars. These car owners may not, and, in fact, usually do not, have any interest in or control of the lading of the car or its destination, but they find it necessary to follow their cars about, and by all means in their power they attempt to expedite the movements to enable them to meet their contract obligations out of the total number of cars they own. Because of this, they have a special interest in the transportation service rendered by carriers. Shippers realize that through the efforts of such organizations they secure a larger use of the cars they lease, and for that reason find it more satisfactory to lease than to own them. Where single shippers own but few cars, it is not practicable for them to so organize their forces as to secure prompt movement and return of cars. Larger owners have organizations to look after the movements of cars and this promotes their prompt movement en route and through terminals. They have representatives at important junction points who advise as to movements and look after the prompt handling of cars.

As before stated, it is undoubtedly in the interest of all shippers that needed cars should be secured from the carrier direct, but so

long as the system of the use of privately owned and operated cars continues to play so important a part in transportation by railroad in this country, and so long as carriers fail to provide themselves by ownership or lease with cars to transport so important a part of the commerce moving over their lines, there seems to be no sound reason why shippers should not continue to secure cars through independent car companies. The need is to secure the largest use of all freight equipment, and the car companies have been an important agency in this regard.

SHOULD CAR OWNERS PUBLISH THEIR CHARGES TO SHIPPERS?

Charges of car owners to shippers range from $15 to $150 per car per month. The lower charges are on unexpired long time contracts and will not be renewed under present conditions. Five years ago, the average rental charge was about $30 per month. In 1917, the average contract was made at $85 per month. It is stated by the General American Tank Car Corporation on argument that the average of all its contracts for the year 1917 was $37.50 per month. The higher average charge is justified, it is asserted by car owners, because of increased cost of materials and labor. Except as to a few car companies, there is no regularity with respect to charges car owners make for equipment leased or furnished shippers. The amount of the charge seems to be measured by the needs of the particular shipper. During recent months there has been such a demand for cars that owners admit that they have received very high prices for single trips or other short time use. In normal times there is not such demand, and the charges are much less.

The Union Tank Line Company, formerly a subsidiary of the Standard Oil Company, and, under the decree of the Supreme Court, a separate corporation, is the largest owner of tank cars in the country. It owns about 18,000 at this time. Its cars are all used in petroleum oil service, and are for the most part leased to former subsidiaries of the Standard Oil Company. Its charges are uniformly the same to all users of its cars, and its contracts are made for periods of not less than six months. The company undertakes to supply all the cars a particular lessee may need during the period of the contract. In 1912, the charges of this company were as follows: For a car of 8,500 gallons capacity and over, $3 as an initial charge for furnishing the car, and 75 cents per loaded day. That is to say, the per diem charge was assessed when the loading began and continued until the car was made empty. For cars of less than 8,500 gallons capacity, the charge was $2.50 for furnishing the car, and 50 cents per loaded day. On January 1, 1918, the charge was as follows, the change having been made during the year 1917: 1¾ cents per 100 gal-

lons per loaded day, based on the capacity of the tank, plus three times 1¾ cents per 100 gallons for each time the car is loaded. The charge of 1¾ cents per 100 gallons runs from the day the loading is commenced until the tank is made empty. Thus, the charge for 8,000 gallons per day would be, under the new rates, $1.40, as compared with 75 cents under the old rates, and $4.20 for furnishing the car, as compared with $2.50. No figures are at hand to compare in actual practice the new charges with the old, but it will be observed that they are nearly twice as much. It is asserted that increased costs of all kinds warrant the higher charges. For cars designed for shipments of casing head gas and naphtha, highly explosive articles, the charge is double that for an ordinary tank.

The General American Tank Car Corporation owns about 5,000 tank cars which are leased to shippers for use in general service of transportation of liquids. The larger number of its cars are continuously used for the transportation of petroleum oils, but many of them are of special design and used to transport acids, wines, cottonseed and coconut oil, etc. Many of the contracts of this company provide for the payment of rental for a number of years, usually five, when the car becomes the property of the lessee. Its charges are not uniform, that is to say, more will be charged for a wine or an acid car than for a petroleum car, dependent upon the cost of the car, the length of lease, etc. Its representatives testified that for similar cars leased and moved under the same circumstances and conditions, the charges are always the same. Most of the cars of this company are leased for long periods, although it makes occasional short-time or trip arrangements.

The North American Car Company owns about 400 refrigerator cars and 600 tank cars. Most of its refrigerator cars are leased to railroads on a monthly or yearly basis. Leases of both refrigerator and tank cars are made to shippers on contract. The terms do not appear of record.

Tank cars for transportation of cottonseed oil or other seasonable articles are, in the main, used by the owners to transport their own traffic, but they lease them at times when not in their own service for any price they can secure, which, of course, varies with different seasons and the needs of the lessees.

It is important that charges which affect the total amount paid by shippers should be uniform under the same circumstances and conditions. The total charges may and doubtless do affect the sale price of the article, and the consuming public has an interest in them. In other words, the public always has an interest in the transportation cost of articles consumed.

Under the law as construed by the courts, car lines and others engaged in leasing cars to shippers are not common carriers and thus do not come under direct control by the Commission. When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of our power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. The act does not impose on common carriers the obligation to haul private cars in interstate commerce. If private cars are used, they must be under an arrangement stated definitely in tariffs. *Procter & Gamble Co.* v. *C. H. & D. Ry.*, 19 I. C. C., 556, 560.

No one has complained so far as this record shows of the amount of the charges for lease of cars, or that the charges are applied in an unjustly prejudicial manner. As a means of removing undue prejudice or unjust discrimination we have the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. We do not feel that on the facts of this record or under present conditions the requirement should be ordered.

SHOULD A SEPARATE CHARGE FOR SPECIAL EQUIPMENT BE ESTABLISHED BY CARRIERS?

This was one of the questions that was thoroughly discussed at the hearings and is fully considered on brief. The first difficulty is to define "special equipment" or "special car." Carriers define "special equipment" to be that which "does something to the freight," or that which has a value to the shipper over and above the mere hauling, the definition to apply to a car furnished by a shipper as well as one by a carrier. It is stated by carriers that the most important factor to be taken into account in determining whether a car is or is not special is the superior service which it affords the shipper. It is conceded by them that the purpose of a separate charge for furnishing special cars is to reimburse them for the service rendered which is not included in the freight rate, and to remove any discrimination that may be found to exist because a better car is furnished one shipper than another.

It is insisted by shippers that whether the equipment is or is not special as to its construction has nothing to do with the question at hand. They concede that if the freight rate for the transportation of any article is based upon its movement in a particular kind of a car, and upon request a carrier furnishes one of more expensive construction and one that is more difficult to operate, it is entitled to be paid

for the additional service. A familiar illustration of this situation is found in the rates on potatoes from the northwest. Cases involving this point have been decided by the Commission. *Protection of Potato Shipments in Winter*, 29 I. C. C., 504; *Rental Charges for Insulated Cars*, 31 I. C. C., 255. It appears in those cases that originally potatoes moved only in box cars, and that the freight rates were based on that kind of equipment. Later, carriers were called upon by shippers to furnish refrigerator cars. The Commission approved an additional charge for furnishing such cars on the ground that the freight rates were based on movements in box cars, and that the carriers, when they furnished refrigerator cars, were entitled to receive additional compensation because of the more expensive construction of the car and the greater service to the shipper.

It is further contended by shippers that if an attempt is to be made to define special equipment for handling of which the carrier should make a separate charge in addition to the rate for transportation, the real test should be the extent of the use of the particular kind of a car. No doubt a car of a peculiar type when first used might be considered special equipment because of its construction and design. If later that type of car should come into general use throughout the country, and move a steady and heavy volume of traffic, it would lose its special character. It is not contemplated by carriers that every car which is differently and more expensively constructed than a flat or box car should be considered a special car. A coal car is everywhere considered an ordinary car, but there are several types, differing in cost, and requiring distinct loading and unloading facilities. In *United States* v. *Pennsylvania R. R. Co.*, *supra*, the Supreme Court, at page 222, after reviewing the decisions of the Commission with respect to its duty and power to require carriers to furnish cars, said:

> This then was the view of the Interstate Commerce Commission of the duty of carriers and its power over them; that is, that it was the duty of carriers to provide and furnish equipment for transportation of commodities and that this duty might expand with time and conditions, the special car becoming the common car, and the shipper's right to demand it receiving the sanction of law.

It is suggested by carriers that they should be permitted to charge a sum in addition to the freight rate when cars of special design are used to transport articles of any kind. A representative of one of the leading carriers of the country suggested that there should be at least three charges for transportation of certain kinds of traffic. He was of opinion that there should be one charge for shipments in a box car; a higher charge when the same kind of shipments were transported in a ventilator car; and a still higher charge when in a refrigerator car. This contention is not entirely new. In *Re Trans-*

portation, etc., of Fruit, 10 I. C. C., 360, 373, decided in 1904, the Commission said:

> We think that it is the duty of the respondent railroad companies to furnish refrigerator cars for the transportation of this fruit. While it is possible that these carriers might at the outset have legally declined to provide this special kind of equipment, they ought not to be permitted to do so at this time. For years they have voluntarily made such provision; and this industry has grown up upon the strength of that arrangement. Such cars are generally furnished in all parts of the country when required for this species of traffic. While a refrigerator car costs somewhat more than an ordinary box or flat car, the additional expense is not great. Railroads at this day might as well decline to provide stock cars for the transportation of live stock as refrigerator cars for the carriage of perishable commodities.

In numerous decisions of the Commission it has been held that the published rates of carriers include the furnishing of refrigerator or other cars of special design. An example is to be found in *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 20 I. C. C., 106. In that case the contention was made by the carriers that the charge for refrigeration should include compensation for the use, and the cost of maintaining a car of that type. In answer to this contention, the Commission, at page 108, said:

> In determining the freight rate this fact has been taken into account; that is, the rate applied on shipments under ventilation has been adjusted in view of the fact that a refrigerator car, more expensive than the ordinary box car, must as a practical matter be employed. Hence, in determining the additional sum which the shipper who has the benefit of refrigeration should pay, nothing should be added by reason of the fact that a car of this type is used.

In substantially all rate cases of any importance that have been considered by the Commission relating to articles transported in refrigerator or other cars of peculiar type, carriers have defended their rates by showing more or less in detail that the commodities are transported in such cars, of greater weight, and more expensive to operate than ordinary cars. These facts thus called to the attention of the Commission have not been ignored in passing upon the reasonableness of the rates in issue in the particular cases. Certain articles were not transported in appreciable quantities, and from certain parts of the country not at all, until after the refrigerator car was perfected, and freight rates were made with a view to transportation of such products in that kind of a car and in no other. The wide diversity of traffic and the special transportation that many carriers perform would make a car special in one section of the country, or over one railroad, that would, in another section or over other railroads, be an ordinary car. A carrier which transports nothing but lumber would not of necessity own a hopper-bottom coal car; one that hauled nothing but coal need not own a refrigerator car; one that had no live-stock shipments would

own no stock cars; and one that transported fruits, vegetables and grain only would not possess a tank car. It was suggested at the hearing that carriers might specify in their tariffs the cars they hold themselves out to furnish, and that all other kinds of cars would be considered special by that carrier. Under the system of through rates in this country, such special charges would result in nothing but confusion in tariff publications and lead to uncertainty in amount of freight charges to be paid by shippers or receivers.

As illustrative of what might be done should a charge be authorized for supplying equipment of a special type, the American Refrigerator Transit Company, on or about February 1, 1918, notified certain users of its refrigerator cars that in the future a charge of $7.50 would be made for furnishing a car. A like notice was not sent to all shippers, but it was stated that it was the intention to make such a charge where shipments do not move under stated refrigeration charges. The American Refrigerator Transit Company is railroad owned, and its charges are all published in the tariffs of its owners and contract lines. The contention is that the subsidiary company acts in a dual capacity, in that it acts as the agent of the carrier in soliciting shipments, and for itself in furnishing cars. The proposed charges have not been collected, or published in the owning carrier's tariffs, but the incident is sufficient to show possible complications, should charges for furnishing certain cars be sanctioned.

As before stated, many of the rates now published by carriers include the transportation of articles in cars for the hauling of which carriers here assert they are entitled to extra compensation. It would be practically impossible to determine what rates do or what do not include the hauling of commodities in special types of cars. Any attempt to state separate charges of the nature proposed would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight.

BASIS OF COMPENSATION FOR USE OF PRIVATE CARS.

When a shipper furnishes his own car for transportation of articles in common use and which move in large volume, he relieves the carrier of so much of its obligations as a common carrier. This is true whether the shipper furnishes the car as owner or lessee. Carriers recognize this and make allowances to the owner or controlling shipper, as before stated, for the use of such cars. The question here to be considered is as to the basis of the allowance or payment therefor. When this case was first heard, the only power of the Com-

mission to regulate payments by a carrier for an instrumentality of transportation furnished by the shipper was the power given in section 15 of the act to determine what is a reasonable charge as the maximum to be paid by the carrier. This provision was directed to the prevention of rebates by way of excessive allowances to shippers, and has never been considered as granting power to fix a reasonable amount as an initial proposition as payment for the use of the car. The act of May 29, 1917, hereinbefore referred to, grants power to the Commission to fix the compensation to be paid for the use of any car not owned by the carrier.

Carriers contend that the amount paid for the use of shippers' cars should not exceed that sufficient to cover repairs and depreciation, and that therefore some of the allowances are now too high. Car owners contend that the allowance or payment now made for the use of their cars is too low, and that it should be in such an amount as to provide for maintenance, depreciation, cost of operation, taxes, and a reasonable interest on the investment. To the last contention there is one notable exception, The General American Tank Car Corporation. On brief it is stated on behalf of this corporation that although it is contended by some shippers that ownership and control of tank cars is of no peculiar advantage to them, the position taken is not entirely sound. The shipper who is assured of the exclusive use of a tank car, and consequently of the condition of the tank for the receipt of his lading, enjoys an advantage not afforded by a system in which, if the cars were furnished by railroads, he would not have such exclusive use of the car, and for this advantage the shipper ought to bear some proportion of the cost of ownership and maintenance. It is the opinion of this corporation that the proportion which the shipper should bear must of necessity be arbitrarily fixed, and if the shipper receives enough to cover repairs, depreciation and cost of operation, he would secure adequate compensation. It is the further opinion of this company that in normal times 1¼ cents per mile for the loaded and empty movements of the car would be sufficient to cover the suggested items.

On the other hand, 90 per cent of the tank-car owners insist that payments for use of cars should be sufficient to cover interest on investment, depreciation, cost of operation, cost of repairs and cost of maintenance, and all elements that may be included to reimburse the shipper for the cost of furnishing a car which the carrier, under the law, is bound to furnish. It is conceded by these interests that while it is the duty of a carrier to furnish the cars, as a practical matter the fulfillment of the duty is surrounded by many difficulties. These tank-car owners prefer to furnish their own cars, and they assert it would be impracticable for carriers to do so. Preserving a car for

the character of oil handled on its previous trip enables the refiner of oil to eliminate delays in cleaning and transferring cars around from one railroad to another, delays that would be expensive to the carrier, and which it could not in actual practice prevent. It is more economical and more efficient for the refiner to furnish a tank car, either owning it or leasing it from some concern, than for the railroad company to own it. A refiner producing two kinds of oil, gasoline and residuum, requires two kinds of cars. Another refiner producing all grades of oil, from the lighter oils down to coke, will require several kinds of cars. The cost of cleaning a car which has been used for fuel oil, in order to make it fit for handling gasoline, is very great. These and other reasons which are given in detail and might be here repeated, if necessary, have led to the system of private ownership of tank cars throughout the country generally. In fact, carriers as a rule provide in their tariffs that where tank cars are used they must be furnished by the shipper, or that the carrier does not obligate itself to furnish such a car. It is argued in behalf of these tank-car owners that in permitting the refiner to furnish his own cars, the railroad company performs no transportation service, and that the latter is refraining from performing its legal duty because it can not do it efficiently. It is asserted that any advantage that the oil shipper may have from the ownership or control of tank cars is due to his own ability to perform a service for the carriers which they do not perform, and that they could not perform as cheaply or efficiently. The compensation due the owner or controller under such circumstances is the cost to him of the facility furnished. The cost of furnishing a tank car is analyzed from all standpoints, and the conclusion is reached by them that the payment should not be less than 2 cents per mile on the loaded and empty movements.

With respect to payment for use of refrigerator cars, the packers, while not conceding that the payment of 1 cent per mile on the loaded and empty movements is sufficient at this time, are willing to continue on that basis with a view of testing it under normal conditions of transportation. Other refrigerator car owners insist that any allowance or payment below 1½ cents per mile on the loaded and empty movements is unreasonable and unjust. All contend that the payment for the use of the car should be sufficient to cover the cost of operation, maintenance, depreciation and a reasonable return on the investment. It is argued that if a shipper is forced by a carrier to use his own cars the compensation should be adequate; that if the compensation is not equal to the cost of furnishing the car, the result is that the shipper who has to use his own car is paying more to obtain transportation than the shipper who obtains the use of a railroad car; that the furnishing of a car being a transportation

service, the entire cost thereof should be covered by the payment made by the carrier for the use of it; and that any other basis will result in unjust discriminations.

The amounts paid by carriers for the use of tank cars or refrigerator cars does not permit of the operation of any of them at a profit considered reasonable by owners, and has not during any time during the last six years, and some of them were and are operated at a loss, taking into account a return on investment, cost of repairs, maintenance, and depreciation.

It is clearly established that shippers of petroleum oils, fresh meat, packing-house products, and dairy products could not have done the volume of business they have done in the past, or that their plants were constructed to do, except they had possessed themselves of private cars over which they could exercise, and have exercised, control. The refiner of oil or the meat packer could no more do business on an economical and efficient basis without his private cars than he could without his modern equipped refining or packing plant. The private car part of the business has grown with the rest. Doubtless in the beginning demands were made by these shippers that carriers should supply tank and meat cars, but it was quickly demonstrated that business could not be done in the most effective manner were carriers to own or control cars of that kind. As a rule carriers have never furnished these cars, and it has come to be mutually understood that they should not do so. The oil refiner and meat packer demand an adequate supply of cars at all times. It is conceded by shippers that neither an adequate supply nor its efficient distribution can be afforded by carriers. The requirement has been that there shall be the most efficient use of tank and refrigerator cars, which has been one of the results of private ownership. While this has undoubtedly been of benefit to carriers, it has been of incalculable benefit to shippers as well.

The allowance that shall be paid for the use of private cars under all the circumstances and conditions shown must be considered on the average. There can not be, with propriety, as many different rates of payment as there are owners with varying ability to efficiently handle the cars with respect to mileage earnings, repairs, and depreciation, nor can there be as many rates as there are different kinds and grades of privately owned cars. Representatives of carriers assert that a proper basis is payment for repairs and depreciation. Carriers should at least pay for repairs and such depreciation as occurs while the car is in railroad service. The amount of depreciation can not be determined with accuracy. The attempt to fix a stated basis of allowance for use of privately owned cars would by no means result in justice to all owners or to all carriers. The

experience through many years under normal conditions has dictated certain allowances which have been accepted by owners and carriers. Changed conditions have led to an attack upon the allowances now paid by carriers. It has been suggested that the measure of the allowance should be the amount the shipper saves the carrier. In other words, what would it cost the carrier to furnish the particular car; and how much less does it cost the carrier when the shipper furnishes it? This amount is not ascertainable from the record. Doubtless the allowance would vary, if put on that basis, as between different carriers and shippers, and also as between different kinds of cars. No attempt will be made here to fix what shall be a reasonable basis from which the amount of the allowance to be paid by the carriers shall be ascertained. This phase of the case will be considered in the light of past experience and the evidence of record.

The discussion has been chiefly with reference to privately owned refrigerator and tank cars because they are more largely used than any others, but the principles announced are applicable to all, with certain exceptions referred to hereinafter.

HOW SHOULD THE COMPENSATION BE DETERMINED?

Substantially all parties to this proceeding agree that the mileage basis upon which payments are made for the use of private cars should be continued. A number of private car owners stated that they had no objection to payments on a per diem basis, provided the amount was sufficient to pay the cost to them of furnishing the cars. As before stated, payments by carriers for use of private cars have always been on a mileage basis. In 1902, when carriers changed the basis of payment for foreign cars on their own lines from the mileage to the per diem basis, the question of making a similar change with respect to private cars was considered. It was concluded at the time that payments for use of private cars should not be on a per diem basis for the reason that it is very difficult to establish at all times when a private car is or is not in railway service; that there would be a great temptation to favor one private car line or owner over another by moving cars a little slower for one or the other, or by leaving the cars of certain owners on sidings and forgetting them; and that at the time the per diem was agreed upon as between carriers it was fixed at 20 cents, which was known to be too low, and it would have to be increased. The increased per diem rate would have meant largely increased payments to certain car lines and owners which at the time were not justified in the opinion

of carriers generally. Changes in per diem rates are frequent, as heretofore noted, and the amount fluctuates from lower to higher sums, dependent on the car supply of the carriers as a whole. The number of tank and meat cars owned or controlled by shippers are usually dictated by the amount of business each does, and are for the most part adequate for the service. For a short time the per diem was 75 cents per day. On February 1, 1918, it was 60 cents. This amount would materially increase payments on tank cars and other private cars, and on refrigerator cars as well, except those used for the transportation of fresh meat and other highly perishable food products.

To change the basis of compensation for use of private cars would create great uncertainty as to what the per diem should be, whereas, with the experience of years under the present system, the results from operation may be estimated with substantial accuracy. The private car owner now receives payment for the operation of the car. While standing on a consignee's siding or on the siding of a carrier payments do not accrue. The latter situation is of considerable importance when the necessities of transporting certain commodities are considered. For example, fruit and vegetables of a superior quality and in large quantities are grown near the Mexican border in Texas. It is necessary, in order to meet the requirements of shippers from that region, when the crops are good, to have not less than 3,000 refrigerator cars on hand early in each year, in order that they may receive shipments during an exceedingly short shipping season. Cars are sent down to that region and placed on side tracks awaiting loading. It is not possible to send the necessary number at one time. The cars are sent from all directions, care being exercised to move them empty the shortest distance possible. Some of them may remain on sidings for weeks before being loaded. The same situation exists with respect to shipments of canteloupes from Colorado, and berries from Louisiana and Arkansas.

Some consideration was given to the question whether charges should be computed only on the loaded movement, on the theory that this might induce more loading on the return movement. Of course, this ought not to affect the amount of the payment. If it is now on the proper basis the change would mean a double charge for the loaded movement. In special movements of private cars for vegetables, canteloupes, berries, and the like, there is nothing to be hauled when the cars are sent forward for loads. At the eastern seaboard there is always a surplusage of empty cars. The predominant loaded movement is to the east from the west, southeast and southwest. The handling of the empty car causes nearly as much damage to the car for which repairs are necessary as the loaded

movement, and there is little difference in the depreciation during the period of each movement. It was not claimed by carriers that payments should be made on the loaded movement only.

There is no serious difficulty in making settlement as between owner and carrier on the mileage basis. Under present rules, loaded and empty mileage is equalized as regards routes of movement. That is to say, the shipper is required to give each route, or each carrier in the route, a loaded mile for each empty mile of haul, under penalty of paying rates for hauling empty equipment only, which range from 4 cents to 10 cents per mile. Whether under unified operation, should it become permanent, some other rule in this regard may be necessary, is a matter that can not be determined here. Under normal conditions the mileage basis secures to the owner payment for the operation of his car. That is what he is entitled to and it is that for which the carrier should pay.

Deductions from mileage by private cars through terminals are now made. Mileage is calculated from switching limits to switching limits. On a shipment starting from Chicago for New York, the mileage is computed from the outer switching limits of Chicago to the western limits of the Toledo switching district; then from the eastern limits of Toledo to the western limits of the Cleveland, Ohio, switching district; then from the eastern limits of the Cleveland district to the western switching limits of the Buffalo, N. Y., district; and so on to the outer switching district of New York. This is the usual method of computing the mileage earnings on all private cars. It is stated that the practice of carriers is not uniform, and that some of them, where the shipment moves over one line, compute mileage from switching limits of the point of origin to the switching limits of the destination. It is the general rule not to make payment for the movement through switching districts of important points. Many years ago when switching limits were not as extended as to-day, the matter was of no especial importance. To-day it is possible to have a movement through Chicago of over 30 miles within the switching limits, and 10 or 12 miles is by no means uncommon in other cities of the country. Car owners do not urge that payment be made for the use of their cars in switching service. Their demand is that they receive payment for line hauls. This is reasonable, and is not objected to by carriers. The computation of mileage as a basis of payment for private cars should be upon the distance of the haul, with reference to distance tables established by carriers. The practice with respect to such payments should, of course, be uniform.

AMOUNT OF THE COMPENSATION.

It is conceded by car owners that they are not properly entitled to make a profit on their cars used by carriers. They demand, as a rule, that the entire cost to them, together with interest on their investment, shall be covered by payment for their use. A return sufficient to pay all costs, including interest on the investment, has not been realized from the payments or allowances now made by carriers. Returns from representative owners for the year 1912 are shown in table 1 in the appendix. This exhibit does not show the investment in any other property of private car owners than the cars. No account has been taken of investment in repair shops, sidings, etc.

It was not possible to secure exact figures in each instance, but the table may be accepted as representative of the general situation in normal times. Since 1912 the cost of cars and repairs has materially increased, and there has been little change in the mileage earnings. If anything, during 1917 the movement has been less than in previous years because of congestion, embargoes, etc. While the figures are not at hand, priority orders that have been given for shipments of food products to the Atlantic seaboard for shipment abroad have not so materially affected the mileage earnings of the packers during recent years as compared with other private car earnings. Table 2 in the appendix gives the investment, cost of repairs, mileage earnings and depreciation at 5 per cent of certain representative owners of refrigerator, tank, and other private cars for each year from January 1, 1913, to January 1, 1918. The figures in this exhibit are computed on the basis of the returns made by the owners, except the depreciation, which in each instance has been computed at approximately 5 per cent on the reported investment in the cars. It is to be observed that the figures may not be exact, because of the character of the returns made by the owners. It is insisted by car owners that 5 per cent is not sufficient to cover depreciation. The life of the average refrigerator and tank car is from 8 to 15 years. Some kinds of tank cars and other private cars have to be practically rebuilt in a short time, frequently less than eight years. However this may be, the table may be used for the purpose of indicating the representative financial results to owners on the basis herein suggested.

Owners receive larger returns for refrigerator than for tank or other kinds of cars. The reason for this is that perishable freight requires rapid transportation to prevent deterioration. It moves in the fastest freight trains of all carriers. Packers and car lines who are largely engaged in shipping perishable commodities insist on the prompt movement of their cars, both loaded and empty. Tank cars

do not usually move with equal rapidity. The shipments are not perishable and do not require expedited movement, nor do they ordinarily get it, except in special cases. Large users of tank cars, however, have organizations to keep the cars on the move as continuously as possible. The packers have branch houses in all important cities of the country to which shipments are made in large quantities. For example, Swift & Company have 450 of such branch houses. The shipments of the packers to New York City and for export constitute about 25 per cent of the total.

The cost to the carriers of moving tank cars or refrigerator cars has not been determined. The average tank now in use holds 8,000 gallons, and the average load weighs 55,000 pounds. The average load in a refrigerator car weighs about 30,000 pounds. Including the ice, the weight would be about 34,000 pounds. The service of the carrier on the loaded movement of a tank car is greater than on a refrigerator car, and the average earnings are also greater. A proportion of refrigerator cars contain return loads, and tank cars return empty in most instances. The investment in a tank car is about the same as in a refrigerator car, and repairs by the owner to a refrigerator car usually exceed those to a tank car.

As before stated, in all that part of the country east of the transcontinental zone, the payment for the use of a refrigerator car is 1 cent per mile on the loaded and empty movements. In that part of the country east of the Mississippi River the payment for refrigerator cars was increased from ¾ of a cent to 1 cent per mile on October 1, 1917, on the suggestion of the American Railway Association after consideration of a demand therefor by owners. For more than 30 years tank-car users and owners have received ¾ of a cent on the loaded and empty movement.

Owners of tank cars contend that the rate was fixed many years ago when the cars cost about $1,000; and that if the allowance was proper at that time, it is inadequate now when cars, even on a normal basis of charges, cost from $1,500 to $1,600. The cost of repairs and maintenance of tank cars has steadily increased. The same is true of refrigerator cars. As before stated, the average carload of oil to-day weighs about 55,000 pounds. Twenty years ago the average load was about 24,000 pounds. In other words, the average load has increased two and one-half times, and the revenue of the carriers per car mile has more than doubled.

The following table gives average cost of cars for each year from 1912 to 1917, both inclusive:

REFRIGERATOR CARS.

	Carrier owned.		Privately owned.	
	Number.	Average cost.	Number.	Average cost.
1912	[1] 48,926	[2] $1,182.01	54,582	[3] $864.02
1913	55,184	1,200.18	34,985	929.36
1914	61,281	1,200.41	36,167	958.70
1915	61,075	1,207.05	35,911	1,012.40
1916	61,054	1,240.57	33,531	1,025.20
1917	60,475	1,255.52	36,375	1,099.02

TANK CARS.

1912	9,150	(4)	30,099	[5] $993.21
1913	8,941	$1,186.78	21,566	1,078.66
1914	8,715	1,208.90	22,671	1,097.43
1915	9,188	1,215.01	28,090	1,068.21
1916	9,359	1,221.12	33,222	1,170.68
1917	9,636	1,287.37	44,141	1,370.91

[1] Based on reports from 127 representatives railroads.
[2] Based on 24,549 cars as reported.
[3] Based on 7,718 cars as reported.
[4] None reported.
[5] Based on 15,392 cars as reported.

Cars purchased in the latter part of 1917 cost on the average about $3,700. The marked increase is due to increased costs of material and labor and is not a measure for costs in normal times.

A large owner of tank cars testified that the average cost of tank cars in 1913 was $1,100, and in 1917 prices ranged from $1,650 to $3,755 per car during the earlier and latter parts of the year. He stated that under the ¾ of a cent allowance the average earnings in 1914 were $63.09. The cost of maintenance, including depreciation, plus 6 per cent on the actual cost less depreciation, amounted to $158.74 per car; that is to say, during the year 1914, the mileage failed to pay expenses and a 6 per cent return on the investment by $95.65 per car. In 1914, in order to secure a return of 6 per cent on depreciated investment, and to pay operating expenses, the mileage allowance should have been 1.89 cents; in 1916, 1.65 cents; and in 1917, 1.75 cents. The Union Tank Line Company shows that the average cost of repairs to its cars in 1914 was $65.07, and that depreciation at 5 per cent was $42.70, a total of $107.77. At 1 cent per mile, the average earnings of its cars would have been $91.97, or $15.80 less than cost on the basis stated. In 1917, according to returns from this company, the average cost of repairs was $49.07 per car; depreciation at 5 per cent, $42.58 per car; and the mileage earnings were $90.87 per car. It is stated that much of the equipment is new, and repairs are on a minimum basis.

In figures set out in table 1 of the appendix, the earnings of Swift & Company on refrigerator cars in the year 1912 appear. This company may be taken as representative of the packers. The returns

from mileage received by them are the highest of any refrigerator cars in private ownership. The following table gives the average earnings and depreciation at 5 per cent on the average value per car, together with the total for the years 1915, 1916, and 1917:

Year.	Cost.	Mileage earnings.	Repairs.	Depreciation.	Total depreciation and repairs.
1915	$896.36	$191.10	$138.81	$44.82	$183.63
1916	916.34	204.52	158.71	45.81	204.52
1917	890.09	197.51	186.77	44.50	231.27

The average daily movement of tank and refrigerator cars, and, in fact, of any private car, is difficult to ascertain with accuracy. In the appendix to this report, table 3 gives the performance of private cars of different kinds operated for owners or lessees, compiled from reports submitted in 1913. It shows movement of refrigerator cars to be from 39 to 86 miles per day. From other figures in the record, it appears that cars of the packers have the largest daily movement, approximately 75 miles. Some of this apparently rapid movement may be accounted for in part by the fact that products shipped by them frequently move in trainloads from the Missouri River and Chicago to New York, and that empties are returned in the same manner. The cars in trains do not encounter delays at break-up or classification yards. Fruits and vegetables do not ordinarily move as rapidly as fresh meats. It is probable that the average movement of refrigerator cars is from 45 to 50 miles per day. Fruits and vegetables from California to points east of the Mississippi River move about 60 to 65 miles per day, but the hauls are unusually long, and the movement of them is not fairly representative.

The average daily movement of tank cars is equally difficult to determine. The record shows various average movements of different owners from 15 to 40 miles per day. The average, on the whole, appears to be about 25 miles per day.

Very little evidence was submitted with respect to privately owned coal and coke cars. It was asserted that the increased cost of cars and repairs entitled the owners thereof to a greater allowance than 6 mills per mile now paid. There are a large number of coal and coke cars privately owned in official classification territory. In other sections of the country there are but few that are not furnished by carriers. On this record, what would be a reasonable allowance to the owners of private coal and coke cars, can not be determined.

Live poultry and palace stock cars are specialized to a high degree. It is doubtful if carriers could be required to furnish them.

They have, however, developed a large and remunerative traffic, and carriers have always paid owners for their use.

DISCRIMINATION IN USE OF PRIVATE CARS.

Because of their superior organization, and their ability to give carriers tonnage, the leading packers of the country have been able to secure better use of their cars than some of their competitors. These great shippers of perishable articles have used to the fullest extent their splendidly effective organizations to secure prompt service for their cars used in shipments of their products. Smaller competitors who have not, and can not afford to have, such organizations, have secured very much less efficient service from the private cars they own or control.

An Iowa packer who leased 20 cars for shipment of carcass meat in 1917 gave the operation of 6 of his cars as follows:

Shipped.	Days held.	Rental per car.	Earnings.
June 27, 1917	177	$116.46	$16.56
July 19, 1917	149	98.04	39.17
September 12, 1917	68	44.94	14.06
September 16, 1917	106	69.75	37.55
September 19, 1917	101	66.45	51.56
September 21, 1917	111	73.04	36.04
Total		468.68	194.98

It will be noted that the first car was not returned to him for nearly six months. A representative of this packer testified that this car and other cars were not tied up in congested terminals, but were in use for the various periods shown by carriers in hauling traffic for others. He stated that it was impossible to get his cars returned in any reasonable time.

A small packer at Birmingham, Ala., attempted to ship carcass meat to the northeast, including such points as New York, Boston, and Pittsburgh, Pa. An exhibit filed by him shows that cars were not returned to him within 15 days from any point north of the Ohio River, and that they were detained for periods ranging on the average about 30 days, some being held for 66 to 90 days. He was unable to secure enough mileage payments to meet his rental charges. He endeavored to secure cars from the carriers, but when these were once loaded they remained away for long periods and he could secure no others. He was, therefore, unable to continue the business. A packing concern at Cleveland, Ohio, also had trouble in getting cars controlled by it returned to its plant. The failure to return cars to the smaller packers is due to the neglect of a lawful duty by

carriers. The obligation to treat each shipper fairly, no matter how small his shipments may be in comparison with those of another shipper, is one carriers can not escape. Whether under the terms of the act the carriers have been guilty of unjust discrimination in the cases referred to, can not be determined on this record. The duty imposed on the carrier by law is to give equal treatment to all shippers who are in position to demand it. Where the same carrier or carriers serve two shippers, who, by their location, the character of their output, and distance from markets where their products must be disposed of, are in substantially similar circumstances and conditions, the serving carrier or carriers can not lawfully prefer one to the other in any manner whatsoever.

Meat packers everywhere are under compulsion, if they are to ship carcass meat, to supply themselves with cars, and carriers transport them under arrangements with the shippers. If the carriers were required to publish in their tariffs a rule to the effect that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, will be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee, doubtless much of the apparent injustice hereinbefore referred to would be avoided. A rule similar in terms to that suggested was applied by carriers with respect to foreign cars on their lines previous to April 26, 1917, but it was not applicable to private cars.

Shippers of oil in tank cars are required to furnish the cars, and many shippers of perishable products other than fresh meat find it necessary to own or control cars, because they can not in any other manner secure an adequate supply. The suggested rule should apply to all private cars in order to prevent discrimination, and to secure to owners such use of their cars as their necessities may require.

Carriers throughout the country generally have provisions in their tariffs which name rates on petroleum oil and other liquids in tank cars that they are not under obligation to furnish such cars. Other carriers provide that shippers must furnish tank cars. Notwithstanding this many of them have cars which are used in commercial service. For example, the Pennsylvania Railroad system owns 448 tank cars, and rates named for transportation of liquids in tank cars are governed by the official classification, which provides that

> In prescribing ratings in this classification for articles in tank cars the carriers whose tariffs are governed by this classification do not assume any obligations to furnish tank cars.

The Atchison, Topeka & Santa Fe system owns 2,965 tank cars and leases 100, making a total of 3,065. Its rates on articles transported in tank cars are governed by the western classification, which provides that

Where the classification provides ratings on commodities in tank cars such ratings do not obligate the carrier to furnish tank cars in case the carrier does not own, or has not made arrangements for supplying such equipment.

The Pennsylvania acquired its tank cars many years ago. At first they were operated by a subsidiary company known as the Green Line. It owned about 1,200 cars. In 1902, the Pennsylvania Railroad began operating the cars itself. At that time it had 625 cars. Since about 1880 none of the equipment that was operated by the Green Line or the Pennsylvania has been renewed by purchases of new cars. The cars were purchased when there were no oil pipe lines to the seaboard, and the purpose for which they were acquired was the transportation of crude oil from the Pennsylvania oil fields to the seaboard. On the completion of the pipe line, for a time there was but little use for the cars, but they are now used to transport refined oil. The cars owned are not sufficient to meet the demands of shippers at points on the Pennsylvania lines at any time. It is stated by a representative of the carrier that the number owned nearly meets the demand after refiners have used their own equipment. In other words, it is stated that the railroad owned cars, supplementing those privately owned, nearly meet the demand. In March, 1914, the railroad company owned 495 cars, and at that time they were not sufficient to supply the demands of shippers, even with increased private ownership. It is asserted to be somewhat difficult to make distribution of limited equipment or any equipment for the oil traffic of to-day, and it is admitted that the Pennsylvania is frequently short of oil cars to meet the demands of its shippers. It is also stated that one of the reasons why the Pennsylvania had not acquired more tank car equipment was because very few railroads had such cars, and those it owned were scattered over the country beyond its control and it received no like cars in return. The cars owned by the Pennsylvania are now divided into assignments for various grades of oil. Out of the number owned in March, 1914, 200 cars were assigned to transport refined oil and naphtha; 100 for light lubricating oil or neutral oil; and 143 for heavy or black lubricating oil. A few of its cars are in its own use for the transportation of creosote. The cars are confined to the oil business, no tank cars being furnished by the Pennsylvania for shipment of any other liquid.

The cars owned by this company are of relatively small capacity. That is to say, its equipment on March 1, 1914, consisted of 77 of 5,500-gallon capacity, 163 of 4,500-gallon capacity, and 255 of 3,600-gallon capacity. The newest car it possessed at that time was 33 years old. Of course, the body and trucks have been replaced from time to time during that period. It was stated that the company did not propose to increase its tank-car equipment.

The Pennsylvania has no plan or scheme for distribution of its tank-car equipment. A shipper makes a request for a car, and if the railroad does not have it, he is relegated to some other source of supply. Whatever distribution is made is through the general office in Philadelphia, but not under any defined system. The endeavor was stated to be to make as equitable a division as possible, and, as a general rule, this had been accomplished.

The Santa Fe originally purchased tank cars to carry supplies for its oil-burning engines. Its cars are not used in commercial service except occasionally. At times, however, some of its cars are supplied to shippers on request. There is no evidence that what cars are used by shippers are distributed in accordance with any plan or system. If a shipper makes request for a car and it is available, he receives it. If it is not available, the request is refused. Numerous western carriers have or own tank cars, which when not in use in their own service are furnished to shippers.

These facts disclose an anomalous situation. Carriers who state in their tariffs that the rates they name therein for the transportation of commodities in tank cars do not obligate them to furnish cars are constantly doing so when it is for their convenience, or when they are able to do so. This situation was repeatedly called to the attention of the carriers during the hearing, but no satisfactory explanation was made by any of them.

One petroleum shipper testified that for some years he had received a supply of cars from the St. Louis-San Francisco, and they suddenly refused to furnish any more at a time when he had contracts to supply customers, and he was unable to secure more than a small share of his requirement from another carrier, and then in uncertain numbers and at indefinite times.

If shipper A should apply to the Atchison, Topeka & Santa Fe for a car, and be supplied with it, and shipper B, at the same point and on the same date, desiring to ship to the same destination, should make a similar application and be refused, it would appear on the face of it that the carrier had favored one over the other. A certain carrier might supply one shipper continuously with cars and relegate his competitor to buying his cars or leasing them. The possibility for discriminatory treatment of shippers is ever present under the existing state of carriers' tariffs. One of the main purposes of the act to regulate commerce is to make uniform, just, and reasonable all published rules and practices of carriers under them.

The situation as respects the Pennsylvania was considered by the Commission in *Pennsylvania Parafine Works* v. *P. R. R. Co.*, 34 I. C. C., 179, but from a different angle. In that case the question was as to the power of the Commission to require carriers to acquire

more tank cars when their supply was inadequate to meet the demands of shippers. The Supreme Court in *Pennsylvania R. Co.* v. *United States*, *supra*, held that such power was not committed to the Commission. A case of discriminatory practices growing out of insufficient equipment was not considered nor passed upon. Doubtless the Commission if it found any unjust discrimination practiced by any carrier flowing from the peculiar tariff situation above described could require the carrier to cease and desist therefrom. This would result, perhaps, in a refusal to furnish cars to the favored shipper, but would not be a satisfactory adjustment of the matter. In the present state of the law the Commission has power to prescribe reasonable and nondiscriminatory rules for car distribution. Carriers which own tank cars should be required to distribute those it furnishes to shippers in accordance with rules and regulations published in tariffs whereby each shipper who makes reasonable request may receive his fair and proportionate share of the available cars.

REFRIGERATION CHARGES.

Investigation of refrigeration charges and rules and regulations governing the service was included in this proceeding because perishable freight requiring refrigeration moves largely in cars not owned directly by carriers, and the service in connection therewith is performed, in many cases, by independent corporations or subsidiaries of carriers. For example, the Pacific Fruit Express performs refrigeration service for the Union Pacific and Southern Pacific; the Santa Fe Refrigerator Despatch for the Atchison, Topeka & Santa Fe; and the American Refrigerator Transit Company for the Missouri Pacific, Wabash, and other contract lines. These are carrier-owned lines. The Fruit Growers' Express furnishes cars and performs refrigeration service for the Atlantic Coast Line, Seaboard Air Line, Southern, Florida East Coast, and other carriers; the Utility Operating & Supply Company owns icing stations at points north of the Ohio and Potomac rivers and east of the Mississippi, and performs icing service at such points; and Swift & Company performs this service at various points in official classification territory. The refrigeration and reicing charges of all these companies are published in tariffs of carriers, and such charges are generally collected by the latter from shippers and remitted to the companies performing the service.

As a rule, charges for refrigeration of fruits and vegetables are in stated amounts per car, per mile, or per package, for the entire service from origin to destination. There are exceptions to this rule which need not be considered in detail. It is also a rule that charges for refrigeration of fresh meat and packing-house products are based

on a rate per ton of ice and salt furnished. This statement applies to substantially all shipments east of the transcontinental zone. From Missouri River territory to north Pacific coast, Spokane, and Montana territories, the charges are based on a stated sum per car for the service. *Westbound Transcontinental Refrigeration Charges*, 34 I. C. C., 140. Practically all dairy products, including eggs, dressed poultry, butter, oleomargaine, and cheese in certain territories, move under tariffs which name the freight rates for transportation, including refrigeration. In other territories they move under charges for the ice furnished or under stated charges.

The rates for fruits and vegetables are named in stated amounts for the through service. The car line which receives the charge is required to pay certain carriers for the ice they furnish. For example, there is a stated refrigeration charge on oranges from the Pacific coast to New York City; a shipment from Los Angeles, Cal., to New York City via the Santa Fe and Erie is handled to Chicago, so far as refrigeration is concerned, by the Santa Fe Refrigerator Despatch Company; from Chicago to New York, the refrigeration is performed by the Erie Railroad Company; the Santa Fe Refrigerator Despatch Company collects from the shipper through the carriers the through refrigeration charge from origin to destination, and pays the Erie $2.50 per ton for the ice it furnishes from Chicago to New York. The same situation obtains on a perishable shipment handled by the Fruit Growers' Express from Jacksonville, Fla., to Buffalo, N. Y. The car line receives from the shipper through the carriers the published stated charge from Jacksonville to Buffalo, and performs the refrigeration service from Jacksonville to Potomac Yards, Va., both inclusive. North of Potomac Yards, the railroad which performs the refrigeration service receives $2.50 per ton of ice furnished from the Fruit Growers' Express. Thus the car lines engaged in furnishing refrigeration fix a rate based on the cost of the entire service, but carriers furnish, in many instances, a large part of the service, and are paid for the amount of ice furnished.

In 1914, 151 railroads reported that they owned and operated 1,347 icing stations. During the same year Armour interests operated 29, Swift & Company 6, and 4 were jointly owned by Swift & Company, Armour & Company, and Morris & Company. The exact number now owned and operated by carriers and others does not appear, but it is stated that there has been no substantial change since 1914.

Rates charged for ice and salt furnished for shipments of perishable freight vary in different sections of the country. Fresh meats require that the ice be crushed and mixed with salt, and fruits and

vegetables do not require crushed ice or salt. The rate east of the Mississippi and north of the Ohio and Potomac rivers is $2.50 per ton of ice furnished. If salt is required, it is furnished free. This rate is applicable to shipments of all commodities in case a separate charge is made for refrigeration or reicing. In other sections of the country charges for refrigeration of fresh meats and packing-house products are generally $2.50 per ton of ice and 40 cents per 100 pounds of salt, with a minimum charge of $1.25 for ice and 40 cents for salt for each car reiced in transit. The charge for ice furnished by railroads for shipments of fruits and vegetables is frequently higher at the same station than for shipments of fresh meats and packing-house products. At Springfield, Mo., on the St. Louis-San Francisco, the charge for reicing fresh meats and packing-house products is $2.50 per ton of ice, while the charge for other perishable commodities is $4 per ton. The same situation obtains at Mounds, Ill., on the Illinois Central, at points on the Ohio River, Birmingham, Ala., and other points in the southeast.

Some of the great packing concerns of the country now operate directly, or through corporations they control, a number of icing stations at which they re-ice their own shipments, as well as those of competitors, and any perishable commodities that require re-icing en route at the particular station. These icing stations are operated by Swift & Company and by the Utilities Operating & Supply Company controlled by Armour and Company. Some of them are owned and operated by one company, and some are owned in partnership, as above stated. Icing service in official classification territory, including New England territory, and in Canada, is performed by the packers or by corporations they control, at Michigan City, Ind.; Benton Harbor, Port Huron, and Del Ray, Mich.; Chicago Junction, and Columbus, Ohio; Havelock and Coteau, Canada; Manchester and Karner, N. Y.; Mahoning and Altoona, Pa.; Newport, Vt.; and Nashua, N. H. At some of these points regular icing stations are operated, and at others there are simply icing platforms. In addition to those named, the Fruit Growers Express operates a number of stations south of the Ohio and Potomac rivers, chiefly in the southeast, which are used to ice shipments of fruits, vegetables, and berries.

At all stations in official classification territory, with two exceptions, where reicing is done for shipments of fresh meats by the packers for railroad companies, the latter pay the former $2.50 per ton of ice furnished. At Altoona and Columbus, the Pennsylvania lines have an arrangement with the Utilities Operating & Supply Company for supplying ice and salt for shipments of perishable freight. At these points, the railroad company pays the operating company for reicing any carload of fresh meats $2.50, ir-

respective of the amount of ice and salt furnished. For shipments of other perishable freight, the railroad company pays $2.50 per ton for the amount of ice actually used and 50 cents per car in addition for the labor of placing it in the bunkers. The average amount of ice required at Altoona is from 1,200 to 1,400 pounds, for which the railroad company, at the published rate of $2.50 per ton, receives from the shipper from $1.50 to $1.75. Under such an arrangement, it appears that the railroad company loses from 75 cents to $1 per car on every car containing fresh meats that is reiced at Altoona. On each car of other perishable freight reiced at Altoona, the railroad company loses 50 cents per car, assuming that it could furnish the ice itself at $2.50 per ton, which is not free from doubt. The same condition exists at Columbus. Rates for reicing are published in tariffs of the carriers, but the icing stations operated by the packers are competitive with similar stations operated by carriers. There can be but one conclusion reached from a consideration of these facts, and that is that the packers have so located their icing stations that in the past whatever rates they have been willing to accept for the service of reicing control the rates for reicing with respect to the movement of fresh meats and packing house products. The largest volume of shipments of these commodities is from west to east, with a considerable movement to the southeast. Take for example a shipment from Kansas City to the southeast. The short route would be over the St. Louis-San Francisco, through Springfield, Mo., where there is a railroad icing station. A competitive route would be through East St. Louis, Ill., where there is an icing plant operated by the Armour interests. Whatever rate for reicing is made at St. Louis must be met at Springfield. The same competition affects rates at Memphis and Birmingham. A shipment from Chicago to the south or southeast might be routed through East St. Louis or Columbus, at each of which points icing plants controlled by Armour and Company are operated. Railroad icing stations in competition must make the same price on pain of losing the business. It is asserted by the packers that over the northern routes $2.50 per ton of ice furnished is ample to cover all costs in connection with reicing, and that competition forces the same rates from west to east and to the southeast via all crossings and all routes. One answer to this is that $2.50 per ton of ice furnished, including free salt and the labor of crushing the ice and putting it in the bunkers, is not now sufficient to pay the costs even by the northern routes. Exhibits filed of record show that in 1913 certain icing stations operated by the packers and their subsidiaries in official classification territory yielded a profit. Figures were not submitted showing results in more recent years.

It is insisted by carriers generally that it is necessary, in order to prevent discrimination, that charges for refrigeration should be a stated sum in cents per 100 pounds of freight transported. That is to say, that carriers as a rule in this proceeding advocate that refrigeration charges should be a stated sum in cents per 100 pounds of freight hauled in each car, based on the carload minimum; and that for less-than-carload shipments there should be a stated sum for the entire service in cents per 100 pounds for the tonnage hauled, with a minimum charge per shipment which should be the equivalent of the less-than-carload charge for 100 pounds.

The railroad-owned car lines are of the opinion that the refrigeration charge should be either based on the freight transported, or on a per car basis.

The Louisville & Nashville Railroad Company desires to continue its charge based on the amount of ice furnished, even though it results in performing the service at cost or less, on the theory that by so doing it may encourage the growth and production of perishable products on or adjacent to its lines.

Carriers give as their reasons for desiring that refrigeration charges be based on the tonnage of freight hauled, the following: (1) Carriers can not be expected or required to sell ice as a commodity, they are required to furnish refrigeration service; (2) a stated charge places unlimited responsibility on the carrier, with freedom to give adequate and efficient refrigeration in transit without restrictions from shippers; (3) the stated charge promotes the conservation of food products by preventing waste; (4) it insures parity of rates and equality between shippers and shipments; (5) a charge based only on the cost of labor and ice and salt does not give the carrier compensation for the various other factors which form legitimate parts of the gross cost of furnishing refrigeration; and (6) a stated charge is known in advance, and is of convenience to the shipper in enabling him to quote prices f. o. b. destination.

It is stated of record that there are now no stated refrigeration charges published based on the weight of the freight hauled. There are charges now in effect based on the package and distance of the haul. The Commission has approved stated charges on a per car basis in transcontinental service. *Arlington Heights Fruit Exchange* v. *S. P. Co.*, 20 I. C. C., 106; *R. R. Com. of Cal.* v. *A. G. S. R. R. Co.*, 32 I. C. C., 17; *Westbound Transcontinental Refrigeration Charges*, 34 I. C. C., 140.

Shippers were of opinion that it would not be possible to fix refrigeration charges with reference to the lading of the car, without discrimination; that such charges would require a shipper to pay for maximum refrigeration in a car furnished by a carrier twice as

much in the case of a 60,000-pound load as for 30,000-pound load; and that the charges would vary with each load shipped, although the service rendered by the carrier, so far as the refrigeration is concerned, would be the same with respect to each load.

A representative of the Refrigerator Car Lines Committee of the National League of Commission Merchants of the United States, interested in fruit and vegetable shipments, testified that refrigeration charges for short and medium hauls have always been based on the amount of the ice furnished, where the carrier renders the service. It is contended that this is a simple and direct method of charging the shipper for what he receives, and remunerating the carrier for what it furnishes. It is further insisted that no workable or equitable plan for applying refrigeration charges on the basis of the freight hauled could be devised that would fit the varying conditions of transportation of perishable commodities for short or medium distances. Among the conditions named are changing temperatures, different costs of ice, nature of the shipments, and the various differences in hauls. It is insisted that the present rules maintained by carriers with respect to comparatively short hauls, by which the weight of the ice and when and where it is furnished, all appear on the freight bills, is more satisfactory than the payment of a stated charge, which includes no information as to the amount of ice used by the carrier or where it is placed in the bunkers.

Shippers of fresh meats and packing-house products insist that it would not be just, economical, or in the public interest that stated charges for refrigeration of such products should be established and maintained by the carriers of the country. It is asserted by them that most of the services performed by carriers included in stated charges approved by the Commission and applied to their commodities, are performed by shippers of fresh meats and packing-house products, and that certain other elements of cost which might properly be included in stated charges, if they were to be established *de novo*, have already been included in the freight rates. It is conceded by Swift & Company on brief that the carrier is entitled to a fair charge for ice furnished, such charge to include all items of labor, interest, etc., on the investment in the icing plant; and that if the present charges are not sufficient to include the cost of ice and the labor of putting it in the bunkers, the cost of salt, and other items of cost, the carrier is entitled to a higher charge.

It is further asserted that in most instances where stated refrigeration charges now exist the carrier furnishes the car; that with respect to shipments of fresh meats and packing-house products the shipper is required to furnish the car; that where stated charges

prevail the carrier precools the car; that in shipments of fresh meat and packing-house products the shipper precools the car and it would be impracticable for the carrier to perform such a service; that where stated refrigeration charges are imposed the carrier performs the initial icing; that in shipments of fresh meats and packing-house products the shipper performs the initial icing, and it would not be practicable for the carrier to do so; that under stated refrigeration charges the cost of repairs to ice bunkers and the cars are borne by the carriers; that with respect to shipments of fresh meats and packing-house products all repairs are borne by the shipper and owner of the car; that in cases where stated refrigeration charges have been approved by the Commission allowance was made for the cost of hauling the ice; and that such cost has been included in the freight rates on fresh meats and packing-house products.

It is contended that none of the elements ordinarily considered as going to make up a stated refrigeration charge, except the cost of ice and salt, and the labor of putting it in the bunkers, is proper to be charged against shipments of fresh meats and packing-house products.

It is argued by shippers that haulage of the ice, cost of supervision and repairs to bunkers and cars, and cost of extra switching were taken into account in fixing rates on fresh meats and packing-house products. For example, it is stated on brief that extra switching is an item for which the Commission allowed $1.75 per car in passing on the reasonableness of stated refrigeration charges in transcontinental service. *Arlington Heights Fruit Exchange* and *Railroad Commission of California Cases*, *supra*. It is insisted that this is an item already included in the freight rate on fresh meats and packing-house products moving under cost of ice and salt reicing charges; that by reference to the testimony and exhibits of the Commission's records in the *Eastern Live Stock Case*, 36 I. C. C., 675, and *Fresh Meat and Packing House Product Rates*, 38 I. C. C., 665, it will be found that switching to ice houses and weight of ice transported were elements upon which evidence was introduced by the carriers in support of increased rates and which were considered by the Commission. In the first case the Commission approved a rate of 47.5 cents per 100 pounds from Chicago to New York, as proposed by the carriers. Attention is also called to the fact that the rate then approved has been increased to 55 cents by order of the Commission dated March 12, 1918, in which was vacated the suspension of certain proposed increased rates in Investigation and Suspension Docket No. 1124, *Eastern Live Stock—Fresh Meat Case*.

These shippers further contend that refrigeration charges should be determined from a practical and economical standpoint, the nature of the product, the conditions under and the seasons in which it moves, the character and amount of refrigeration required, and the most economical way of furnishing it from the standpoint of the carrier, shipper and public. It is asserted that where carriers are called upon to furnish refrigeration, as in the case of fruit, berries, and vegetables from scattered stations and for short periods of time during the warm months when maximum refrigeration is required, a stated charge for the entire service is proper and just; and that where it is necessary for a shipper to precool and reice at his plant year-round shipments from cold-storage plants, such as fresh meats and packing house products and dairy products, and where, both from a practical and economical standpoint, such precooling and reicing should be borne by the shipper, the charge for reicing at various stations en route should be based upon the cost of ice and salt furnished. It is further insisted that in regard to fresh meat, packing house and dairy products, the character of refrigeration required varies with different seasons of the year, the conditions under which they are shipped, and the nature of the commodities. Cheese, eggs, butter, and the less perishable packing house products, during about one-half the year, require no icing en route. The maximum refrigeration with respect to these commodities is only required in the warmest months of the year. It is contended that if a stated charge per car or per 100 pounds is established by carriers, it would necessarily be fixed high enough to cover maximum refrigeration, which would burden the traffic with charges for service not performed or required.

Attention is called to the fact that stated refrigeration charges were first established for transcontinental shipments which move great distances through varying temperatures and changing conditions. It is insisted that stated charges for refrigeration of fruits and vegetables are proper because the entire service is performed by the carrier or agent from origin to destination; that such shipments are not precooled as a rule, and the service is an entire service, including the furnishing of the car, initially icing it and reicing it en route; and that the service from beginning to end is a carrier service for all items of which payment should be made. In shipments of fresh meat and packing-house and dairy products, shipments are made from cooling stations, and the initial icing and reicing is done by the shipper. A few years ago dairy products were shipped without precooling, but at this time and during recent years the commodities are precooled before being loaded into cars at central stations or concentrating points erected for the purpose and maintained

at the expense of the shipper. *National Poultry, Butter & Egg Asso.* v. *B. & O. S. W. R. R. Co.*, 43 I. C. C., 392, 399.

Under the present practice at packing plants, empty cars are delivered in receiving yards. They are there thoroughly inspected and washed out and, if necessary, disinfected by a force of men employed for the purpose. If cars are found to be in good order, and they are clean, they are switched to the icing sheds usually the evening before loading. The bunkers are filled with crushed ice and salt. The next morning they are switched to loading platforms and loaded with fresh meat or other articles. After loading, the bunkers are again filled with ice and the cars are ordered forward. It is insisted that icing facilities of carriers at packing centers are limited and at some distance from the loading platforms of shippers, and that there would be a waste of time and ice should carriers undertake initial icing and reicing of fresh meats and packing-house products. It is further stated that at this time carriers could not secure facilities adjacent to plants of meat packers without enormous expenditures of money; and that if such facilities were secured the work could not be so economically or efficiently done as now. Some of the carriers recognize this situation and assert that the service might be provided for in a stated charge, and an allowance paid to the shipper for precooling and initial icing. Because of the varying degrees of initial preparation of cars for loading of various products at packing plants, during different seasons of the year, it is doubtful if any allowance could be agreed upon or prescribed that would be just and reasonable in all cases.

It is to be remembered that with respect to shipments of fresh meat and packing-house products, charges in all that part of the country east of the transcontinental zone are based on the weight of the ice or ice and salt furnished. The service rendered by carriers with respect to fresh meat and packing-house products and dairy products is reicing, and not refrigeration in all that the latter service implies. The plants of carriers about the country are reicing and not precooling or refrigeration plants. Some car lines, such as the American Refrigerator Transit Company, have cooling stations where commodities may be stored, but they are for the use of the company to protect shipments en route, or the articles are kept under refrigeration at a charge to the shipper pending disposition. There is no doubt that shippers of fresh meat and packing-house and dairy products are in position to best prepare cars for initial icing and reicing before they are tendered to the carrier for transportation. Needs in this respect as to different articles are peculiarly within shippers' knowledge, and under the practice that has obtained for more than 30 years, they have fitted their plants to do the work effectively and economically.

The statute contemplates that carriers may ice in transit as well as perform the entire refrigeration service. The language of the act is that transportation shall include "all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported." In speaking of precooled shipments and the preparation of cars for shipment in *Arlington Heights Fruit Exchange Case*, *supra*, at page 118, the Commission said:

> This service should be performed in the most economical manner and it is evident that the ice can best be supplied by the same parties who load the car and prepare it for shipment. The filling of the bunkers with ice is a part of the preparation of the car for shipment and not a part of the transportation service rendered by the railroads.

There are some practices connected with reicing service now performed by carriers with respect to shipments of fresh meat, packing house and dairy products, that should be changed. The larger meat packers are engaged to a considerable extent in shipping dairy products as well as products of their meat-packing plants. As heretofore explained, considerable reicing service in official classification territory through which shipments pass on their way from west to east and southeast, is performed for the railroad either directly by the packers or by corporations they control. Whenever transportation service of this character is farmed out by the carrier to a shipper, who renders the service with respect to his own shipments, as well as those of competitors, there may be, and there quite likely are unlawful results. A meat packer located on the Missouri River, and by no means an insignificant concern, measured by the volume of its shipments, complains vigorously that reicing performed by a competitor at an interior point in official classification territory is not satisfactory, and that its competitor has access to the billing and is advised of the character of the shipments and to whom they are made, contrary to the provisions of section 15 of the act. The evidence is not clear as to particular instances of improper icing, but there can be no doubt that access to the billing of a shipper by another and a competitor is unlawful. If the shipper who renders the service makes a profit therefrom, there at once arises the question whether such profit does not amount to a concession to him from the rates he pays on his own traffic.

Aside from these considerations there is dissatisfaction and unrest amongst competing shippers when disputes as to the amount and character of icing is referred to one of them who rendered the service. This situation obtains when the icing is done by a corporation controlled by a competitor as well as when it is done directly by the competitor. Of course, there can be no valid objection to

carriers doing by an agent what they may do themselves, where such agent is not a shipper or otherwise interested in transportation of the articles with respect to which the service is rendered.

This record does not contain evidence sufficient to determine what would be a reasonable charge for service of reicing fresh meats, packing house, and dairy products, but it does indicate that it is now being performed by carriers at less than cost. Charges for the service should be upon a just basis considering the costs proper to be included such as salt, ice, labor, etc., together with a reasonable profit.

DEMURRAGE ON PRIVATE CARS.

Under the existing tariffs of carriers private cars are made the subject of demurrage when standing on private tracks of owners. It is agreed by both carriers and owners that tariffs should be so worded as to exempt a private car from demurrage under such circumstances. It was stated that provision would have been made some time ago for such exemption except for the difficulty of determining who was the owner of a car. It was agreed that a shipper who leases a car for a term is to be considered the owner during such term, and that a stencil mark on the car as defined in tariffs should be conclusive as to ownership for purposes of exemption from demurrage.

Some private car owners insist that they are entitled to a part of the demurrage accruing on private cars held by consignees. This is not the attitude of owners generally. Demurrage is a penalty for detention of cars, and is enforced in accordance with tariff provisions to keep them moving. This is as important to private car owners as to the railroads and everyone else. The records of car placement, etc., are kept by the carriers, and they make the collection in the interest of the entire shipping public, and the charges are rightfully retained by them.

MASTER CAR BUILDERS ASSOCIATION RULES.

The Master Car Builders Association is an organization of car owners, both private and railroad. The association first met in 1864, when a number of men connected with car departments of railroads came together to discuss problems that had arisen in freight-car construction. It was organized in 1867, when the first regular meeting was held and by-laws were adopted. The organization did not become an effective agency in car construction and repairs until 1887, when the first book of interchange rules was adopted and published. The purposes of the organization are—

(1) for increase of knowledge on the part of members relative to freight-car construction and maintenance; (2) to promote uniformity in freight-car construction and interchangeability of detail; (3) to improve freight-car construction in reference to safety and other details; and (4) to develop rules to adjust mutually the differences of railroads or members of the association in connection with freight-car maintenance and interchange.

The by-laws provide that a member of the association shall be entitled to one vote for each 1,000 freight cars owned. The affairs of the association are controlled by an executive committee elected by the members. Various standing committees are appointed by the executive committee to consider and report to the executive committee or the association at its annual meeting on the different questions that are presented to them. For example, there is an arbitration committee the business of which is to adjust disputes that may arise under the rules.

A code of rules governing the condition of and repairs to freight cars for the interchange of traffic is printed and circulated from time to time as occasion requires, or when material changes in the rules are made. Rules are provided for the care of freight cars off the line of the owning carrier, for interchange of such cars, with specifications as to construction of cars and parts. In short, the rules go into detail with respect to every phase of construction and repairs, giving prices to be charged for parts used in repairs, and prescribing how bills shall be made and rendered to owning carriers.

Many owners of private cars conduct their own repair shops, where major repairs are made. For running repairs owners have to rely on the repair shops of railroads.

During the hearing private car owners made complaints which were chiefly directed to the fact that carriers did not render bills for repairs promptly; that evidence as to improper repairs, or repairs that had been charged for but not made was not permitted to overcome the statement of the repairing carrier; that cards formerly attached to cars showing repairs made at the time were not now sent with the cars; and that private car owners did not have representation on the executive or arbitration committees.

There is no serious complaint as to the rules regarding the making of and charges for repairs. The general disposition of car owners was to conform to the rules if they are faithfully observed. Some private car owners desire that the Commission require carriers to publish the rules in their tariffs and have them observed accordingly. Aside from the question of jurisdiction of the Commission over operations of carriers in this respect, carriers object to such filing on the ground that the effect would be to set the rules as they now are

so that necessary changes could not be promptly made. Application to the Commission for permission to make changes which might be required would delay operation, and complicate a system which as a whole has operated satisfactorily. Many private car owners were not in favor of the publication of the rules in tariffs.

A representative of the Master Car Builders Association stated at the hearing that there appeared to be no objection to returning to the practice of attaching repair cards at the time the repairs are made to the cars of private owners, provided that the bill was not nullified if the card was lost or destroyed. To this, car owners agreed, and it is suggested by them that there be attached to their cars a steel pocket or other receptacle in which the repair card might be placed. The representative of the association also stated that there is no good reason why representatives of private car owners should not be on all committees of the association, including the executive and arbitration committees. He further stated that every effort would be made to induce carriers to render repair bills more promptly, and that disputes as to improper repairs or repairs charged for but not made would and should be decided by the arbitration committee under the facts of each case presented and in accordance with the weight of the evidence.

These suggestions were approved by the private car owners, and if adopted many troublesome and harassing disputes as to bills for car repairs will be at an end.

MIXING AND FOLLOW LOT RULES.

The rules governing mixtures of shipments and follow lots now in effect in different sections of the country are not uniform. These rules should not be different when the traffic is transported in privately owned than in railroad-owned cars. Considerable testimony in this regard is devoted to a discussion of the mixing rules in official classification territory applicable to shipments of the meat packers. Practically all shipments by the packers are made in their own cars or in those of their subsidiaries. Because of this the rules specially applicable to them were made an issue in this proceeding.

In addition to rule 10 in the official classification, which is the general mixing rule, carriers in the territory governed thereby have, by exceptions to the classification, published three separate rules applicable to articles shipped by the packers. Under these rules different combinations may be made of fresh meat and packing-house products, or of packing-house products, so that different rates per car or per article may be paid for the transportation. It is perfectly clear that the maintenance of so many rules applicable to ship-

ments from one source complicates the billing and renders it a matter of no little difficulty to determine the charges to be applied to the different articles in each mixture. It is not plainly established of record whether the mixing rules in this territory operate to discriminate unduly against any particular shipper or shippers or any particular description of traffic. It was suggested on the record that such discrimination is possible under the rules.

Mixing rules in the other classification territories are different in many material respects from those in official classification territory as applicable to the same articles. The same thing is to be said with respect to follow lot rules. It is not necessary, however, to consider these rules further in this proceeding, or to suggest what action should be taken with respect to them, for the reason that the matter is now having consideration of a special committee of experts with a view to suggesting and having adopted by carriers rules as to mixed shipments and follow lots, among other things, that shall be clear, direct, and applicable throughout the entire country.

When this case was originally heard, meat pans and other appliances used by the packers for the transportation of packing house products or other products shipped with carcass meat were returned to the point of origin without charge. Charges are now made for such shipments under proper tariff provision. Hooks for the carriage of carcass meat are returned free when properly packed and sent over the line of the transporting carrier.

SHIPMENTS OVER THE ATLANTIC COAST LINE.

When this case was first heard in 1913, shippers of fish, fruit, vegetables, and berries submitted considerable evidence with respect to the condition of cars furnished and the movement of them from points on the Atlantic Coast Line in Florida, Georgia, and North Carolina to northern points. More and better cars and reasonably acceptable service were furnished after the original hearing, and at subsequent hearings no complaint of the service was made. It is assumed that the complaint has been satisfied. At the time of this complaint the cars were furnished by Armour Car Lines under contract with the carrier. At the present time a similar contract is being carried out by the Fruit Growers Express. A carrier may make such a contract, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers.

MINIMUM WEIGHTS.

Little evidence was submitted with respect to minimum weights on shipments of perishable freight transported in private cars. There

is no basis for a finding with respect to this matter. In addition to this minimum weights are inextricably involved in mixing rules, and will doubtless be considered by the committee above referred to.

CONCLUSIONS.

Under all the facts and circumstances shown of record, we find:

1. That as the situation now exists, and under the circumstances and conditions shown of record, shippers may continue to lease cars to transport their shipments from sources independent of carriers by railroad.

2. That a charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car less expensive and not so difficult to operate.

3. That payments should be made by carriers on the basis of the loaded and empty mileage, and that mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts.

4. That there should be no increase in the present payment for use of refrigerator cars and so-called meat cars for transportation in that part of the country east of El Paso, Tex., Albuquerque, N. Mex., and Salt Lake City and Ogden, Utah.

5. That the present payment of ¾ cent on the loaded and empty movements for the use of tank cars of all kinds by all carriers by railroad should be increased to 1 cent per mile for the loaded and empty movements; that the increased allowance should be paid for the use of live poultry cars, palace stock cars, heater cars, and that under the facts here shown the increase should not apply to stock cars, coke cars, coal cars, rack cars, flat cars, box cars, or pocket cars, although they may be privately owned or leased.

6. That carriers should publish in their tariffs a rule that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee.

7. That where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars.

8. That re-icing charges on shipments of fresh meat and packing-house products and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; that the carriers only should perform the service of reicing and make charges therefor; and that shippers of

these products should not be permitted to perform the service of re-icing their own and competitors' shipments en route, either directly or through corporations controlled by them.

9. That tariffs of carriers be so changed that private cars standing on the private tracks of owners shall not be subject to demurrage charges.

10. That the Master Car Builders Association rules be not filed in tariffs of carriers; and that suggestions made at the hearing as to modifications in rules and practices be adopted by the association.

With respect to the proposed changes in Master Car Builders Association rules as agreed to and proposed at the hearing it is assumed they will be promptly acted upon. It is also assumed that carriers will no longer permit the packers or others by themselves, or through corporations controlled by them, to re-ice their own shipments and those of their competitors en route, and that the carriers will proceed promptly to equip themselves with proper icing stations to perform the service enjoined upon them by law. It is further assumed that proper tariff rules will be promptly published with respect to distribution of tank cars owned by carriers. A rule should also be incorporated in tariffs of carriers at an early date to the effect that private cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee. As there was no objection to the computation of mileage on distance tables that shall show the mileage of private cars based on the total haul, with the exception alone of switching movement, it is assumed arrangements will be made by carriers accordingly.

With respect to the other conclusions and findings an appropriate order will issue.

APPENDIX.

TABLE 1.—*Mileage received by representative refrigerator, tank, and other private-car owners for the year 1912, together with a comparison of the total of repairs and depreciation computed at 5 per cent on the investment in cars, with the mileage earnings for that year.*

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Arms Palace Horse Car Co	441	$754,655	$33,104	$40,577	$37,733	$78,310	$45,206
Chicago, New York & Boston Refrigerator Co	845	750,966	132,047	37,828	37,548	75,376	*56,671*
Doud Stock Car Co	1,558	545,300	60,034	74,080	27,265	101,345	41,311
German-American Car Co	1,020	1,100,700	78,670	39,319	55,035	84,354	5,684
Lemac Carriers Co	200	239,934	18,752	16,314	10,000	26,314	7,562
Mather Horse & Stock Car Co	10,601	8,063,875	127,211	440,415	403,194	843,609	[2]715,398
Streets Western Stable Car Line	7,226	4,134,236	332,690	338,455	206,712	545,167	212,477
Union Tank Line Co	11,881	12,918,480	797,868	669,588	645,924	1,315,512	517,644
Western Heater Dispatch	546	567,556	57,391	15,989	28,378	44,317	*13,074*
American Refrigerator Transit Co	2,784	3,171,722	427,903	279,414	158,586	438,000	10,097
Armour Car Lines	15,206	11,878,007	2,293,282	1,063,144	593,900	1,657,044	*636,858*
Swift Refrigerator Transit Co	7,621	8,559,317	1,349,194	811,252	427,966	1,239,218	*109,976*
Cudahy Packing Co	1,518	1,716,490	423,098	217,093	85,824	302,917	*120,181*
Morris & Co	2,411	2,308,521	476,593	197,256	115,426	312,682	*163,911*
St. Louis Independent Packing Co	150	191,200	35,217	11,915	9,560	21,475	*13,742*
Texas Company	1,148	1,305,291	79,236	36,835	65,265	102,100	22,864
Southern Cotton Oil Co	426	364,170	21,812	21,428	18,209	39,637	17,825
Crystal Car Line	190	228,259	10,963	5,704	11,413	17,117	6,154

[1] Figures in italics show excess of earnings. [2] Rental, $365,992.

TABLE 2.—*Mileage received by representative refrigerator, tank, and other private car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, inclusive, together with a comparison of the total of repairs and depreciation computed at 5 per cent on the investment in cars, with the mileage earnings for each year.*

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Arms Palace Horse Car Co.[2]							
1914	459	$973,608	$36,235	$52,291	$48,930	$101,221	$64,986
1915	467	943,211	46,513	40,656	47,161	87,817	41,304
1916	458	798,391	54,012	54,426	39,920	94,346	40,334
1917	448	693,901	44,930	60,314	34,695	95,009	50,079
Chicago, New York, & Boston Refrigerator Co.:							
1913	845	751,130	134,996	58,184	37,556	95,740	*39,256*
1914	823	746,012	122,502	54,034	37,301	91,335	*31,167*
1915	813	738,524	134,723	97,943	36,926	134,869	146
1916	795	729,173	134,022	74,662	36,459	111,121	*22,901*
1917	781	720,367	126,472	98,994	36,018	135,012	8,540

[1] Figures in italics show excess of earnings. [2] Data not available for 1913.

Table 2.—Mileage received by representative refrigerator, tank, and other private car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, etc.—Con.

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Dead Stock Car Co.:							
1913	1,557	880,012	53,147	76,487	44,001	120,488	67,321
1914	1,439	791,232	35,628	102,320	39,762	142,082	107,094
1915	1,352	766,878	40,367	112,615	38,344	151,959	111,592
1916	1,214	737,556	75,344	90,168	36,878	127,046	51,702
1917	1,080	696,697	64,889	96,695	34,895	131,410	66,527
German-American Car Co., now the General American Tank Car Corp.:							
1913	1,497	1,276,598	124,700	81,278	63,830	145,108	20,408
1914	1,833	1,563,083	139,326	105,722	78,153	183,875	24,349
1915	2,661	2,292,933	199,894	111,256	114,647	225,903	26,009
1916	3,494	4,586,350	251,463	136,080	229,317	365,407	113,944
1917	4,231	6,051,425	284,320	129,864	304,071	433,935	149,605
Lemac Carrier Co.:							
1913	178	214,855	12,347	15,781	10,743	26,504	13,157
1914	156	188,241	7,819	21,229	9,412	30,641	22,822
1915	156	188,241	8,288	7,288	9,412	16,672	8,384
1916	129	155,578	4,256	15,287	7,779	23,066	18,810
1917	200	241,460	17,738	21,281	12,078	33,354	15,616
Mather Horse & Stock Car Co.:							
1913	10,399	7,943,446	111,167	660,604	392,172	1,052,776	941,609
1914	10,021	7,556,339	75,696	730,056	377,917	1,107,973	1,032,277
1915	10,212	7,828,826	78,502	521,255	391,441	912,706	834,204
1916	9,763	7,539,770	49,781	659,432	376,989	1,036,421	986,640
1917	9,261	7,169,033	11,446	826,261	356,452	1,186,713	1,175,268
Street Western Stable Car Line, now The Streets Co.:							
1913	6,750	3,926,915	267,046	312,607	196,346	508,953	241,907
1914	6,486	3,969,548	180,891	345,288	193,477	538,765	357,874
1915	5,458	3,261,378	144,965	368,803	163,069	531,872	386,907
1916	4,972	3,023,355	153,329	340,464	151,167	491,631	338,302
1917	3,661	2,248,155	[2] 74,060	384,763	112,408	477,171	403,111
Union Tank Line Co.:							
1913	12,411	13,609,994	1,991,178	756,020	680,499	1,436,519	554,649
1914	12,389	14,011,309	762,827	688,786	700,565	1,394,345	621,518
1915	14,358	15,651,558	942,819	716,637	782,578	1,499,215	556,396
1916	16,069	18,365,132	1,449,749	871,908	918,257	1,790,217	340,468
1917	18,055	23,634,377	1,641,557	886,471	1,182,219	2,068,690	427,133
Western Heater Dispatch:							
1913	.....	.....	.....	.....	.....	.....	.....
1914, 4 months	380	369,065	26,775	[3] 25,773	6,151	31,924	5,149
1915	379	368,199	43,271	[3] 42,691	18,410	61,100	17,829
1916	379	368,199	37,458	[3] 22,802	18,410	41,212	3,754
1917	379	368,199	16,780	[3] 62,654	18,410	81,064	64,284
American Refrigerating Transit Co.:							
1913	3,146	3,389,578	510,863	286,076	169,479	455,555	*55,308*
1914	3,255	3,988,821	746,333	385,802	299,441	685,243	*61,090*
1915	5,251	5,997,237	941,273	383,326	299,862	683,188	*158,085*
1916	5,212	5,960,773	915,652	467,254	298,039	765,293	*150,359*
1917	5,437	6,195,065	948,245	665,191	309,753	974,944	26,699
Armour & Co., car department: [4]							
1916	4,551	3,393,890	1,109,436	568,786	169,690	733,476	*376,940*
1917	4,866	4,175,774	1,099,463	620,646	208,789	829,437	*270,026*
Swift Refrigerating Transportation Co.:							
1913	7,252	8,555,886	1,424,118	1,139,237	427,794	1,567,031	142,913
1914	6,721	8,166,129	1,295,630	938,363	408,306	1,346,669	51,039
1915	6,783	8,537,579	1,404,379	975,971	426,578	1,402,549	*1,830*
1916	6,628	8,657,319	1,380,089	1,070,961	432,866	1,503,827	123,738
1917	7,118	10,149,532	1,351,152	1,277,661	507,477	1,785,138	433,986
Cudahy Packing Co.:							
1913	1,510	1,513,629	453,074	165,293	75,681	240,974	*212,100*
1914	1,502	1,471,066	440,992	134,084	73,563	207,647	*233,325*
1915	1,498	1,568,979	512,485	119,040	79,448	198,488	*313,997*
1916	1,476	1,398,094	463,543	98,724	69,655	168,379	*295,164*
1917	1,454	1,482,915	406,534	103,439	74,101	177,530	*229,004*

[1] Figures in italics show excess of earnings.
[2] Rental in lieu of mileage, $467,094.
[3] Less repairs on 147 box cars.
[4] Data not available for 1913, 1914, and 1915.
[5] Only repair supplies are shown.

TABLE 2.—*Mileage received by representative refrigerator, tank, and other private car owners for each year from Jan. 1, 1913, to Jan. 1, 1918, etc.*—Con.

	Cars.	Investment in cars.	Mileage earnings.	Repairs.	Depreciation.	Repairs and depreciation.	Repairs and depreciation exceed mileage earnings.[1]
Morris & Co.:							
1913	2,268	2,290,930	498,307	260,266	114,547	374,813	*123,497*
1914	2,273	2,167,421	503,748	294,587	108,371	402,958	*100,790*
1915	2,555	2,596,430	601,524	288,313	129,822	418,135	*183,389*
1916	2,388	2,652,298	605,080	298,200	132,700	430,900	*174,130*
1917	2,731	3,389,763	626,327	364,050	169,488	533,538	*93,789*
St. Louis Independent Packing Co.:							
1913	151	195,654	31,735	11,566	9,783	21,349	*10,386*
1914	151	195,654	33,358	19,813	9,783	29,596	*3,762*
1915	151	195,654	28,135	15,321	9,783	25,104	*3,031*
1916	151	195,654	39,125	19,432	9,783	29,215	*9,910*
1917	151	195,654	32,655	28,179	9,783	37,962	5,307
Texas Co.[2]							
1915	1,478	1,654,326	119,072	40,397	82,716	123,113	4,041
1916	1,458	1,644,667	145,361	44,231	82,233	126,464	*18,897*
1917	1,623	2,020,301	149,214	60,048	101,015	161,063	11,849
Southern Cotton Oil Co.:							
1913	425	405,370	24,001	20,975	20,268	41,243	17,242
1914	424	405,929	23,904	25,310	20,296	45,606	21,702
1915	423	405,000	25,471	69,983	20,250	90,233	64,762
1916	418	401,486	36,012	41,905	20,074	61,979	25,967
1917	396	401,476	34,944	48,529	20,074	68,603	33,659
Crystal Car Line:							
1913	190	218,000	9,712	6,195	10,900	17,095	7,293
1914	194	220,820	9,311	8,673	11,041	19,714	10,403
1915	229	259,320	18,164	6,886	12,956	19,852	1,688
1916	229	259,320	18,117	10,847	12,966	23,813	5,696
1917	229	259,320	17,594	10,438	12,966	23,404	5,810

[1] Figures in italics show excess of earnings.

[2] Data not available for 1913 and 1914.

TABLE 3.—*Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners.*

CLASS A.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS NOT OWNED OR CONTROLLED BY RAILROADS OR SHIPPERS (INDEPENDENTS).

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
Arms Palace Horse Car Company (palace stock cars).	Passenger service	441	$3,447	5	Thoroughbred stock	$1,018.53		[2] $75.92		
Do	Freight service		1,275	5	do	267.31		[2] 75.92		
Do	do		1,167	5	do	269.71		[2] 75.92		
Do	Freight and passenger service		2,200	5	do	357.70		[2] 75.92		
Do	do		1,875	5	do	321.19		[2] 75.92		
Atlantic Seaboard Despatch	Refrigerator	412		412	Dairy products	139.84	15,807	139.84	43	$0.38
Chicago, New York & Boston Refrig. Co.	do	859	889	859	do	247.83	18,526	150.88	51	.41
Chicago Refrigerator Despatch Co.	do	312	1,300	25	do	157.40	16,100	131.97	44	.36
Do	do		664	25	Packing house products	141.59	18,224	141.59	50	.388
Crawford, James H.	do	4	400	4	Dairy products	81.39	8,683	81.39	24	.223
Dairy Shippers' Despatch	do	299	1,059	25	do	[3] 163.63	21,041	163.23	58	.447
Do	do		1,059	299	do	485.55	24,280	205.54	67	.563
Eastman Car Company	Heater	425	800	425	Potatoes	297.10	8,010	62.50	22	.17
German-American Car Co.	Tank	1,072	1,200	23	Sulphuric acid	300.00	15,394	119.21	44	.33
Do	do		1,100	15	Petroleum and products	300.00	9,145	68.58	25	.19
International Transit Co.	do	20	1,275	20	Molasses	225.87	8,379	66.60	24	.18
Klein Tank Line	do	46	1,100	46	do	153.98	8,915	68.27	24	.19
Lemac Carriers Co.	Live poultry	200	1,200	25	Live poultry	363.38	13,623	102.04	37	.28
Live Poultry Transportation Co.	do	691	1,546	25	do	424.40	16,790	123.75	46	.34
Missouri River Despatch	Refrigerator	446	699	446	Packing house and dairy products	179.12	18,861	158.94	52	.44
Shippers' Refrigerating Car Co.	do	277	986	277	Dairy products	169.95	14,708	122.00	40	.33
Solar Transportation Co.	do	22	340	20	Packing house products	155.28	20,221	153.28	55	.42
Union Tank Line Co.	Tank—600 service	11,881	1,087	25	Petroleum and products	257.93	8,113	60.85	22	.17
Do	Tank—1,000 service			25	do	211.55	5,304	43.53	16	.12
Do	Tank—13,000 service			25	do	273.75	8,328	66.21	24	.18
Western Heater Dispatch	Refrigerator, beer-car type	546	1,054	25	Potatoes	124.75	7,255	58.87	20	.16
					Beer	169.96	18,091	163.12	50	.45
Western Live Stock Express	Double-deck stock	975	596	24	Hogs, sheep, calves	125.05	20,425	125.05	56	.34

CLASS B.—INCORPORATED CAR LINES OPERATING CARS, OWNED OR CONTROLLED BY RAILROAD COMPANIES.

American Refrigerator Transit Co.	Refrigerator	3,243	$1,000	3,243	Fruit, vegetables	$271.51	14,122	$131.95	39	$0.36
Central Fruit Despatch	do	3,646	717	3,646	do	174.96	18,500	158.44	51	.424
Pacific Fruit Express	do	9,962	1,541	25	do	547.42	24,805	205.20	68	.56
Santa Fe Refrigerator Despatch Co.	do	7,678	1,013	7,678	do	306.70	22,199	165.36	61	.45

[1] The total earnings of private cars includes such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

[2] Figures shown represent average mileage earnings of all cars operated.

[3] Commission earnings not given.

[4] New cars, in service only a few months.

TABLE 3.—*Statement showing the performance of private cars or different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners*—Continued.

CLASS C.—INCORPORATED CAR LINES OPERATING CARS, OWNED OR CONTROLLED BY SHIPPERS; CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH CONTROLLING COMPANIES ARE INTERESTED.

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
Armour Car Lines	Refrigerator	15,206	$1,243	25	Fruit, vegetables	$149.26	17,568	$148.66	41	$0.48
Do	do		717	25	Meats, packing-house products	233.67	27,564	233.67	75	.64
Do	do		500	25	Brewery products	170.40	23,055	None.	63	.....
Do	Tank		979	25	Oil, grease, molasses	119.00	13,951	104.63	38	.285
Chicago Stock Express[1]	Double-deck stock	50	848	25	Hogs, sheep, calves	178.28	29,713	178.28	81	.49
Cold Blast Transportation Co	Tank	1,594	506	25	Oils, tallow	75.44	10,508	75.44	29	.21
Do	Refrigerator		1,083	25	Meats, packing-house products	212.27	25,575	212.27	70	.58
Crystal Car Line	Tank	190	1,140	25	Glucose, corn, oil sirup, etc	314.15	9,880	74.15	27	.203
Cutting Car Co	Rack	100	550	100	Bark	23.48	3,092	18.48	8	.05
Interstate Stock Express[2]	Double-deck stock	25	848	25	Hogs, sheep, calves	153.36	25,500	153.36	70	.42
Kingan Refrigerator Line	Refrigerator	515	900	25	Meat, packing-house products	194.10	25,606	194.10	70	.53
Lackawanna Live Stock Transportation Co.	Stock	320	692	25	Live stock	187.32	31,219	187.32	86	.513
Lemp Refrigerator Co.[3]	Refrigerator	250	1,191	250	Brewery products	179.40	18,817	179.40	52	.49
Do	do			25	do	182.67	19,263	182.67	53	.50
Milwaukee Refrigerator Transit & Car Co.	do	916	1,000	25	do	239.87	26,844	239.76	74	.66
National Manufacturing Co	Double-deck stock	960	619	25	Live stock	193.50	33,925	193.50	90	.53
National Transportation & Terminal Co.	Tank	58	870	25	Turpentine	116.12	15,719	117.90	43	.32
Procter & Gamble Transportation Co	do	531	975	25	Cottonseed oil, grease, tallow	89.35	11,912	89.35	32	.24
St. Louis Refrigerator Car Co	Refrigerator	1,125	700	1,125	Brewery products	231.72	24,697	220.85	66	.60
Swift Live Stock Transportation Co	Palace horse	4	5,091	4	Thoroughbred stock	1,090.20	50,602	1,090.20	139	2.99
	Single-and double-deck stock	531	405	25	Live stock	104.43	17,416	104.43	48	.286
Swift Refrigerator Transportation Co	Tank	7,621	1,260	25	Cottonseed oil, lard, tallow, etc	151.85	14,223	107.18	39	.294
	Refrigerator		1,167	25	Fruits, vegetables, products	277.27	16,406	125.61	45	.344
	do		1,110	25	Meats, packing-house products	210.21	25,188	209.40	69	.57
Union Refrigerator Transportation Co	do	2,150	735	2,150	Brewery products	187.80	20,661	186.54	57	.51

CLASS D.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH OWNERS OF CARS ARE INTERESTED.

American Asphaltum & Rubber Co	Tank	30	$1,178	25	Liquid asphaltum	$91.56	11,282	$84.45	31	$0.234
American Cotton Oil Company	do	733	875	25	Cottonseed oil	101.24	12,509	93.82	34	.257
American Linseed Co	do	222	750	25	Linseed oil	85.61	11,415	85.61	31	.23
American Maize Products Co	do	33	1,179	33	Glucose, corn oil	95.25	12,700	95.25	35	.26
Atlas Coke Co	Coke	60	1,382	60	Coke	59.77	9,961	59.77	27	.16
Beech Nut Packing Co	Refrigerator	5	1,388	5	Packing-house products	162.02	21,603	162.02	59	.44
Callahan, A. P., & Co	Tank	3	1,402	3	Vinegar	47.58	6,333	47.58	18	.13
Chanute Refining Co	do	101	900	25	Petroleum and its products	92.63	12,350	92.63	34	.25
Cincinnati Abattoir Co	Refrigerator	92	1,200	5	Packing-house products	185.76	25,302	185.76	69	.51
Conewango Refining Co	Tank	34	600	34	Petroleum and its products	71.64	9,548	71.64	26	.20
Crescent Brewing Co	Refrigerator	3	875	3	Brewery products	112.57	11,257	112.57	51	.31
Crew Levick Co	Tank	57	721	25	Petroleum and products	116.60	15,548	116.60	42	.32
Cudahy Packing Co	Refrigerator	1,618	1,135	25	Meats, packing-house products	283.09	31,403	283.09	86	.775
Do	Tank		1,260	33	Oils, grease, and fats	119.13	15,884	119.13	44	.327
Cudahy Refining Co	do	319	795	319	Petroleum and products	92.52	12,335	92.52	34	.25
Do	do		1,000	25	do	71.08	9,477	71.08	26	.20
Cudahy Bros. (Milwaukee)	do	253	725	2	Lard, etc	56.04	7,472	56.04	20	.15
Do	Refrigerator		725	251	Meat, packing-house products	179.06	19,357	179.06	53	.49
Dingee, Squire & Co	Tank	11	727	11	Pickles	30.00	4,002	30.00	11	.09
Goodwin Mfg. Co	do	20	1,250	20	Tallow, grease	70.60	5,454	40.90	15	.11
Gulf Cooperage Co	Rock	30	950	23	Empty barrels	56.40	9,401	56.40	26	.15
Hately Bros	Tank	2	1,145	2	Lard	91.44	12,193	91.44	33	.25
Heinz Co., H. J	Refrigerator	152		25	Food products	126.26	15,406	126.26	42	.35
Do	Tank	51		25	Pickles in brine	71.08	9,475	71.08	26	.20
Hill, J. F	do	1	1,140	1	Liquid asphaltum	90.01	12,006	90.01	33	.247
Hormel & Co., Geo. A	Refrigerator	9	1,143	9	Packing-house products	114.70	11,470	114.70	31	.31
Interstate Cooperage Co	Rock	43	700	25	Stove bolts	13.98	2,330	13.98	6	.04
Jemison Coal & Coke Co	Coal	1,500	1,026	1,600	Coal	83.36	13,894	83.36	38	.23
Kirk, Jas. S. & Co	Tank	20	1,088	20	Oil, soap fats	54.82	7,308	54.82	20	.15
Lewis, F. J., Mfg. Co. (Northern Tank Line)	do	40	1,063	40	Pitch, turpentine, asphaltum, creosote.	59.16	7,888	59.16	22	.16
Libby, McNeill & Libby	Refrigerator	79	$925	20	Food products	$100.17	11,965	$100.17	33	.274
Do	do		700	5	do	198.94	23,450	198.94	64	.545
Maryland Steel Co	Coal	499	1,246	499	Coal	86.75	8,492	51.15	23	.14
Matthiesson & Hegler Zinc Co	Tank	83	815	25	Sulphuric acid	63.91	8,521	63.91	23	.18
Mineral Point Zinc Co	do	82	1,195	82	Acid	62.45	8,326	62.45	23	.171
Morris & Co	Refrigerator	2,411	913	25	Meats, packing-house products	216.28	25,839	216.28	71	.592
Do	Stock		257	226	Live stock	83.30	13,823	83.30	38	.23
Do	Tank		1,263	19	Oils, grease, fats	97.14	12,955	97.14	35	.266
National Ammonia Co	do	16	1,493	16	Ammoniacal liquors	71.40	9,520	71.40	26	.19
National Pipe Line Co	do	568	1,250	25	Petroleum and products	107.19	14,293	107.19	59	.29
Petroleum Products Co., The	do	157	1,094	25	do	79.40	12,989	97.40	36	.267
Quaker Oats Co	do	17	888	17	Molasses	45.24	6,039	45.24	17	.12
Reid, Murdock & Co	do	5	682	5	Pickles.[1]	35.15	4,687	35.15	13	.096

[1] The total earnings of private cars include such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

[2] Car line not separately incorporated.

Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators; compiled from reports submitted by private car owners—Continued.

CLASS D.—INDIVIDUALS, COMPANIES, AND CORPORATIONS OPERATING CARS USED CHIEFLY FOR TRANSPORTING FREIGHT IN WHICH OWNERS OF CARS ARE INTERESTED—Continued.

Names of individuals, companies, and corporations operating cars.	Cars operated.		Average cost per car.	Cars reported on.	Cars used chiefly for—	Per car per year.			Per car per day.	
	Kind.	Number.				Average earnings from all sources.[1]	Average miles run.	Average mileage earnings.	Average miles run.	Average mileage earnings.
St. Louis Independent Packing Co	Refrigerator	200	1,275	200	Meats, packing-house products	176.06	21,382	176.06	58	.48
Sandoval Zinc Co	Tank	4	1,300	4	Chloride zinc, sulphuric acid	22.76	3,131	22.76	9	.062
Southern Cotton Oil Co	do	436	900	26	Cottonseed oil	66.76	8,926	66.76	24	.18
Steger & Sons Piano Mfg. Co	Box	12	429	12	Pianos	30.27	4,860	30.27	13	.06
Stern, Joseph & Sons	Stock	98	200	98	Live stock	179.22	20,671	179.22	62	.522
Stineman Coal Mining Co	Coal	80	1,267	80	Coal	95.20	15,156	95.20	44	.28
Taylor Coal Co. of Kentucky	do	21	700	21	do	20.36	3,277	20.36	9	.06
Texas Co., The	Tank	1,185	1,214	26	Petroleum and products	87.02	11,604	87.02	32	.24
Do	Box		1,335	12	do	56.33	7,510	56.33	21	.154
United Coal Co	Coal	1,010	953	26	Coal	73.10	12,014	73.10	33	.20
Wawtke & Co., Wm	Tank	1	1,189	1	Silicate of soda	80.85	10,780	80.85	30	.22
Waters Peirce Oil Co	do	328	962	206	Petroleum and products	59.69	7,004	59.69	22	.16
Do	do		900	26	do	67.55	9,270	67.55	25	.18

[1] The total earnings of private cars includes such items as mileage, per diem in lieu of mileage, rental of cars, commissions for soliciting and handling freight, shipments, refrigeration and heating service, and other miscellaneous earnings.

No. 9777.

OREGON FRUIT COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 14, 1917. Decided July 23, 1918.

1. Carload rates for the transportation of watermelons from Monson and Sultana, Cal., to Salem, Corvallis, Portland, and Medford, Oreg., not shown to have been unreasonable or unjustly discriminatory.
2. Carload rates for the transportation of watermelons from Sultana and Monson to Salem and Medford, Oreg., found to have been in violation of long-and-short-haul rule of section 4 of the act. Reparation denied.

A. J. Parrington for complainant.

Alfred A. Hampson for defendants.

REPORT OF THE COMMISSION.

HALL, *Commissioner:*

Complainant is a corporation engaged in the wholesale fruit and produce business, with its principal office at Portland, Oreg., and several branches at other points in that state. By complaint filed July 11, 1917, it alleged that the rates charged for the transportation of six carloads of watermelons on July 21, 24, and 28, 1915, from Monson and Sultana, Cal., to Salem, Corvallis, Medford, and Portland, Oreg., were unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section of the act. Reparation is asked. Rates are stated in cents per 100 pounds.

The lines of the Southern Pacific Company and of the Atchison, Topeka & Santa Fe Railway Company, hereinafter called the Santa Fe, serve the San Joaquin Valley in California.

Monson is a local station in that valley on the Southern Pacific, 4.6 miles south of Dinuba, a point common to both lines. Sultana, 3 miles across country from Monson, is a local station on the Santa Fe. Dinuba is 30 miles south of Fresno, Cal., which is served by both lines, and 173 miles south of Stockton, Cal., also a common point. The shipments from Sultana moved over the Santa Fe to Stockton and thence via the Southern Pacific to destination. Those from Monson to Salem and Portland were one-line hauls on the Southern Pacific; those to Corvallis moved over the Southern Pacific and also, for a short distance, over the Corvallis & Eastern, a subsidiary of the

Southern Pacific. Corvallis is 88.4 miles southwest of Portland. Salem and Medford are 52.8 and 329.3 miles, respectively, south of Portland.

Complainant does not attack the through rates as unreasonable in and of themselves, but contends that it was unreasonable and unjustly discriminatory to exact higher rates from Monson and Sultana than from Dinuba, since all three points are in the same melon-producing zone.

At the time of movement Dinuba had a commodity rate to Portland of 45 cents, and to Corvallis of 46½ cents. The distance to Portland is 903 miles. Watermelons are rated class C in the western classification and the rates charged from Monson to Corvallis and Portland were combinations of the class C rate of 2¾ cents to Dinuba, plus the commodity rates of 46½ and 45 cents, respectively, beyond. From Sultana to Salem and Medford the combination was made on Stockton, class C, 16 cents, plus commodity rates of 35 cents beyond. From Monson to Salem the combination was on Lathrop, Cal., class C, 15 cents, plus a commodity rate of 35 cents beyond. The details of shipment follow:

Date.	From—	To—	Weight.	Charges.	Rate paid.	Rate asked.	Difference.
			Pounds.		*Cents.*	*Cents.*	
July 21, 1915	Monson	Salem	24,000	$120.00	50	45.5	$10.80
Do	do	Corvallis	25,300	124.60	49¼	45.5	9.48
July 26, 1915	do	do	25,020	123.22	49¼	45.5	9.38
Do	do	Portland	24,000	114.50	47¾	45.5	5.40
July 24, 1915	Sultana	Salem	24,875	126.86	51	45	14.92
Do	do	Medford	25,000	127.96	51	45	15.05

The shipment to Portland was reforwarded thence to Astoria, Oreg., but the rate from Portland to Astoria is not attacked.

The rate of 47¾ cents collected on the shipment from Monson to Portland exceeded the applicable combination of a class rate of 5 cents to Fresno, Cal., and a commodity rate of 42½ cents beyond, so that there was an overcharge on this shipment which should be refunded.

On May 16, 1916, through commodity rates of 45½ cents were established from Monson, and on November 26, 1916, of 45 cents from Sultana, to points in Oregon on the Southern Pacific, including those above referred to. These rates are not questioned by complainant. Commodity rates have also been extended to include, as originating territory, the entire melon-producing zone in the San Joaquin Valley and a rate of 46½ cents now applies from as far south as Klink, Cal., 10 miles south of Monson.

The record does not show the volume of movement of melons from Sultana and Monson, as compared with that from Dinuba.

Defendants contend that they extended the application of the commodity rates as soon as the volume of movement justified it, but that the lowest combinations of lawfully applicable rates in effect when the shipments moved were not unreasonable or unjustly discriminatory.

In *Rates on Melons from California Points*, Investigation and Suspension Docket No. 399, unreported, decided December 15, 1914, it was found that increased rates of 35 cents then proposed for the transportation of melons, in carloads, from Sacramento, Cal., and points in that vicinity to Portland, and of 51 cents to Seattle and Tacoma, Wash., were justified. Stockton is about 48 miles south of Sacramento and 725 miles south of Portland.

There is nothing of record to indicate that the rates charged were intrinsically unreasonable.

It was testified in behalf of complainant that consignors of watermelons could as readily have shipped from Dinuba as from Monson or Sultana, if cars had been available, and further that the disadvantage of Monson was not reflected in the rates applicable to the transportation of other commodities from that territory. For example, sweet potatoes are also produced in the San Joaquin Valley, and in their transportation to Oregon points the rate from the territory Fresno to Bakersfield, Cal., is the same.

In the report proposed by the examiner, which was served upon the parties, and to which no exceptions were filed, it was recommended that the Commission find that the rates charged were unjustly discriminatory and that no showing of damages had been made. Under section 2 it is unjustly discriminatory and unlawful for any common carrier subject to the act, by any special rate, rebate, drawback, or other device, to charge "any person or persons a greater or less compensation than it charges * * * any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." There is no showing of any device on the part of the carriers to collect from complainant greater compensation than they collected from others for doing "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." No "like kind of traffic" contemporaneously moved between these points at any other compensation than that which complainant paid. There was no showing of undue or unreasonable prejudice or disadvantage under section 3 and the complaint contained no specific allegation in this respect.

Medford and Salem are intermediate to Portland from Sultana and Monson. At the time the shipments moved there were in effect

to Portland rates of 45 cents from Sultana and of 47½ cents from Monson. The rates contemporaneously in effect from Sultana to Salem and Medford were 51 cents and from Monson to Salem 50 cents. These violations of the long-and-short-haul rule were not protected by fourth-section applications and have since been corrected. There is no proof that complainant has been in any wise damaged by the maintenance of the lower rate to Portland.

It has frequently been held that nothing in the act to regulate commerce warrants a presumption of damage. The distinction is plain between the carrier's unlawful act, which might render it liable to prosecution, and the shipper's right to damages for the injury, if any, occasioned thereby.

In the absence of proof of damage to the shipper the fact that carriers have charged or received rates which violate the long-and-short-haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation. *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S., 184; *Nix & Co.* v. *S. Ry. Co.*, 31 I. C. C., 145, 149; *Chattanooga Implement & Mfg. Co.* v. *L. & N. R. R. Co.*, 40 I. C. C., 146; *La Crosse Shippers' Asso.* v. *C. I. & L. Ry. Co.*, 43 I. C. C., 520, 524; *United States Glue Co.* v. *C. & N. W. Ry. Co.*, docket No. 6832, unreported.

An order will be entered dismissing the complaint, as recommended by the examiner.

HARLAN, *Commissioner*, dissenting:

The principle that a carrier may not charge more for the transportation of a like kind of property for a shorter than for a longer distance over the same route in the same direction is founded on general justice, and for many years there has been a more or less insistent demand for legislation forbidding any deviation from that rule in the rates of carriers. The better thought on the question, however, has been that in particular instances conditions may exist to justify lower rates for the longer haul, and this view has prevailed, the present fourth section of the act to regulate commerce vesting in the Commission the power, upon application by the carrier and after investigation, to authorize such departures from the general principle. Except for this provision the section would be mandatory. A second proviso affords the carriers a means, by filing an application, for legalizing existing fourth section deviations until they shall have been passed upon by the Commission. In this case rates of the forbidden character were in effect over the defendant lines during the period described in the complaint and they were not protected or legalized by any such application. By the very terms of the act they therefore stand condemned as having been unlawful.

It is true that the act also condemns as unlawful rates that are unreasonable, unjustly discriminatory, or unduly preferential; but until the Commission after full hearing has indicated otherwise, a carrier in good faith may be in error with respect to the reasonableness and nondiscriminatory character of its effective rates. In general the act therefore puts upon the complainant the burden of showing that a carrier's rates are unlawful in either respect. The unlawfulness, however, of the rates involved in this proceeding does not grow out of any error in judgment by the defendant lines. The rates in question were unlawful because of the failure of the defendant carriers to follow the procedure peremptorily required by the act to give them the quality of lawfulness. With no application on file to protect them, the rates were in contempt of the act. The majority report nevertheless does not even place upon the carriers at fault the burden of showing that the higher rates at the intermediate points were reasonable and nondiscriminatory, but leaves upon the complainant the burden of supporting its claim for reparation by showing the rates to have been unreasonable or unjustly discriminatory, precisely as if there were no fourth section at all in the act to regulate commerce.

For many years it has been the established rule to regard through rates that are higher than the aggregate of the intermediate rates as prima facie unreasonable, and it has been our practice almost uniformly if not invariably to award reparation in such cases on the basis of the aggregate of the intermediate rates, whether the rate situation was protected by an application or not. Reparation has been awarded in such cases even where the through charge was found not to be unreasonable and was not condemned for the future, the carriers being permitted to correct the fourth section deviation by revising the intermediate rates. Upon like reasoning there should be reparation in this proceeding based upon the excess of the higher charge exacted of the complainant at the intermediate point over the charge fixed in the defendants' tariffs to the more distant point. The higher charge to the intermediate point, for the reasons hereinbefore stated, stands condemned by the act itself as unlawful, and its excess over the lower rate to the more distant point is therefore a proper measure of the complainant's damage. See *S. P. Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U. S., 531.

The ruling of the majority puts upon the complainant the impossible burden of a more or less elaborate and expensive investigation to ascertain whether competitors of the complainant have made shipments under the lower rate to the more distant point to the commercial damage of the complainant. In my judgment the majority

report leaves the fourth section practically meaningless with respect to rate situations like that shown of record.

For these reasons I am unable to concur in the majority views in this case or to assent to the report in the related case of *Iten Biscuit Co.* v. *C., B. & Q. R. R. Co.*, decided concurrently herewith, *infra*, page 724.

I am authorized by COMMISSIONER MCCHORD to say that he concurs in what is here said.

No. 9163.

ITEN BISCUIT COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.

Submitted January 15, 1917. Decided July 23, 1918.

Rates on crackers, cookies, and wafers, in less than carloads, from Omaha, Nebr., to certain points in Kansas, and on empty cracker cans, in less than carloads, returned to Omaha from the same Kansas points, found to have been violative of the long-and-short-haul rule of section 4 of the act. In the absence of proof of unreasonableness and damage reparation denied and complaint dismissed.

P. P. Murray and *C. D. Blaine* for complainant.

W. F. Dickinson, *Wallace T. Hughes*, and *J. C. La Coste* for Chicago, Rock Island & Pacific Railway Company and its receiver; *H. A. Scandrett* and *C. Frankenberg* for Union Pacific Railroad Company; *R. B. Scott* and *F. Montmorency* for Chicago, Burlington & Quincy Railroad Company; and *Henry G. Herbel* and *F. B. Clark* for Missouri Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

HALL, *Commissioner:*

Complainant is a corporation engaged in the bakery business at Omaha, Nebr. By complaint filed September 12, 1916, as amended, it alleges that the rates charged by defendants on numerous less-than-carload shipments of crackers, cookies, and wafers, forwarded on and after June 1, 1914, from Omaha to various points in Kansas, and on numerous less-than-carload shipments of empty cracker cans returned to Omaha from the same destinations, were unreasonable,

unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section to the extent that they exceeded the rates contemporaneously maintained by defendants to and from the same Kansas points from and to certain points in Iowa east of Omaha. It asks reparation.

The shipments moved either over the Union Pacific Railroad, Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, the Chicago, Rock Island & Pacific Railway, hereinafter termed the Rock Island, or the Missouri Pacific Railway. Except as hereinafter noted, charges were collected at the class rates applicable under the governing western classification and exceptions thereto, third class on the crackers, cookies, and wafers, and fourth class on the returned empty cracker cans.

Prior to June 1, 1914, rates between interior Iowa points and Kansas points were constructed by combination on Omaha and other Missouri River points. On that date, following *Iowa State Board of R. R. Commissioners* v. *A. E. R. R. Co.*, 28 I. C. C., 193; 28 I. C. C., 563, hereinafter called the *Iowa Case*, a distance scale of interstate class rates, prescribed therein as reasonable and nondiscriminatory, was established by the carriers from interior Iowa points to points in Kansas on and north of the main line of the Atchison, Topeka & Santa Fe Railway to La Junta, Colo. The application of this scale resulted in lower rates for certain classes, including third and fourth, from Neoga, on the Wabash Railway, and other points in western Iowa, including Chautauqua on the Rock Island, than the specific rates contemporaneously in effect over defendants' lines from Omaha, through which traffic from those points moves, thus resulting in departures from the long-and-short-haul rule of the fourth section. The distance rates prescribed by us from interior Iowa points to the Kansas destinations were also established by defendants on June 1, 1914, in the opposite direction, and created similar fourth section departures as to the fourth-class rates applicable to complainant's shipments of returned cracker cans. These deviations from the fourth section were not protected by applications.

The higher rates were continued in effect between Omaha and the Kansas destinations by the Burlington until September 25, 1914, and by the Union Pacific until February 1, 1915, on which dates these defendants eliminated the fourth section departures by providing for the application of the Neoga rates on traffic moving between Omaha and the Kansas points. No change was made by the Missouri Pacific or the Rock Island in the rates from and to the interior Iowa points or Omaha until April 6, 1916, when these defendants eliminated the fourth section departures with respect to traffic moving over those lines by way of Omaha by providing for

the application of the rates between Omaha and the Kansas destinations as minima between the Iowa points and the same Kansas points. The latter adjustment, in so far as it provided for higher rates from the Iowa points than applied under the distance scale on traffic moving through Omaha, was in conformity with our report in the *Iowa Case* on reargument, 34 I. C. C., 379. In that report, which was issued after consideration of a petition directing attention to the fourth section departures resulting from the application of the distance scale and requesting a modification of our original order so as to permit the observance of the rates from Omaha as minima from the Iowa points, we said:

> The findings of the Commission in the *State of Kansas Case*, 27 I. C. C., 673, that the rates from Kansas City to the destinations here involved did not warrant reduction, and the long-sustained adjustment whereby rates are the same from all Missouri River cities, are sufficient to lead to the conclusion that the present rates from Omaha to the Kansas destinations under consideration, which are now the same as the rates from Kansas City, are not unreasonable. Therefore, to remedy the deviation from the fourth section indicated, we are of the opinion that the order of the Commission in this case should be modified. This modification will authorize the respondents to establish from the points in Iowa in question to points in Kansas upon the main line of the Atchison, Topeka & Santa Fe to La Junta, Colo., and other points in Kansas north thereof, rates not less than those which were in effect upon May 31, 1914—the day before the order became operative—from the Missouri River cities to the same destinations.

The record indicates that on some of the shipments of crackers, cookies, and wafers which moved by way of the Burlington subsequent to September 25, 1914, charges were collected at the higher rates in effect prior to that date, so that these shipments were apparently overcharged.

While the complaint alleged unreasonableness *per se*, the claim for reparation is based primarily upon the ground that the rates charged were unlawful to the extent that they exceeded the rates contemporaneously in effect from and to Neoga and Chautauqua to and from the Kansas points, and reparation is asked only on those shipments which moved during the period when the fourth section departures existed or on which higher rates were charged than contemporaneously applied from and to the Iowa points.

No evidence was introduced by the Burlington or the Missouri Pacific. The Union Pacific introduced comparisons to show that the rates assailed were not unreasonable *per se*, but no justification was offered for the maintenance of higher rates from and to Omaha than were contemporaneously in effect from and to the interior Iowa points. The Rock Island urged that our decisions in the *Iowa Case* and the *State of Kansas Case* did not contemplate reductions in the rates from Omaha, Kansas City, Mo., and other Missouri

River cities, to the Kansas destinations; that to have reduced the rates from Omaha would have necessitated corresponding reductions in the rates from Kansas City; that this would have re-created, in part, the very discrimination that we sought to remove by the rates prescribed in those cases; and that it was, therefore, justified in maintaining the higher rates between Omaha and the Kansas points.

It does not appear upon this record that the rates from and to Omaha were unreasonable, and there is no proof of injury or damage to the shipper resulting from collection thereof. Its claim for reparation rests wholly on the fourth section. Departures from the long-and-short-haul rule of that section were presented in *Oregon Fruit Company* v. *S. P. Co.*, *ante*, page 719. We there said:

> It has frequently been held that nothing in the act to regulate commerce warrants a presumption of damage. The distinction is plain between the carrier's unlawful act, which might render it liable to prosecution, and the shipper's right to damages for the injury, if any, occasioned thereby. In the absence of proof of damage to the shipper the fact that carriers have charged or received rates which violate the long-and-short-haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation.

Following that case, and upon the record herein, no reparation will be awarded and an order will be entered dismissing the complaint.

HARLAN and MCCHORD, *Commissioners*, dissent.

No. 8724.

MURPHY CHAIR COMPANY
v.
WABASH RAILWAY COMPANY ET AL.

Submitted October 19, 1916. Decided July 26, 1918.

1. Ratings applied by defendants on pad, slip, and spring seat chairs and rockers, in carloads, in western classification territory found to be legally applicable.
2. Ratings on reed chairs and rockers, in straight carloads or when mixed with other chairs, in western classification territory not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Charles F. Meyler for complainant.
C. S. Bather for intervener.
R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant herein assails the ratings applied by the defendants in western classification territory on carload shipments of pad, slip, and spring seat chairs and rockers as unlawful; on reed chairs and rockers, in straight carloads, or when mixed with other kinds of chairs, as unreasonable, unjustly discriminatory, and unduly prejudicial. The National Association of Chair Manufacturers intervened in support of the complaint. The term "chairs" as used herein will include rockers.

The complainant ships carloads of chairs, including pad, slip, and spring seat chairs, and reed chairs, from Detroit to points in western classification territory, from which they are reshipped in less-than-carload lots. A pad-seat chair is described as one having a small amount of tufting or padding over the seat or a part of the seat. Some chairs have padded backs. A slip-seat chair has a removable seat which is made over a wooden frame by covering a small amount of tow, cotton, or other filler with leather, imitation leather, or other material. A spring-seat chair is made in very much the same way as a slip-seat chair, except the padding is placed over springs, which are fastened to the frame of the chair.

The following is the only item in the western classification specifically covering chairs in carloads:

Chairs, common, including common rocking-chairs (complete chairs, cane, leather, or wood seat, not upholstered; but exclusive of chair frames, upholstered chairs, and grass, rattan, reed, or willow chairs), wooden stools, common metal chairs, and settees, loose or in packages, straight or mixed c. l., min. wt. 12,000 lbs., subject to rule 6-B.....Fourth class.

The complainant and intervener contend that pad, slip, and spring seat chairs are common chairs, because they are made by the average chair factory and are in general household and office use. In their view upholstered chairs are of larger proportions; are covered entirely or nearly so with cloth, leather, or other material which is laid over a filling of hair, cotton, or upholstering material; and are not in common use or made by the average chair factory. The defendants insist that the term "common chairs" as used in the classification is intended to cover the ordinary, cheap, wooden, cane, or leather seat chairs; and that the padding or covering attached to pad, slip, and spring-seat chairs is upholstering, which therefore excludes them from the tariff provisions applying on common chairs. When shipped in either straight carloads or mixed with other chairs or furniture, pad, slip, and spring-seat chairs take the furniture rating of third class, which is also the rating applied on reed chairs when shipped with other kinds of chairs or furniture. Evidence was introduced concerning the reasonableness of the third-class rating as applied to pad, slip, and spring-seat chairs in straight carloads or mixed with other chairs. The complaint does not allege that rating to be unreasonable or unduly prejudicial, but merely charges defendants with unlawfully refusing to carry those chairs within the provisions of the fourth-class rating. The item covering common chairs is not as clear and definite as it should be, but we are of opinion that it does not include chairs of the kind described herein as pad, slip, and spring-seat chairs, and that the ratings assailed are legally applicable.

The complainant contends that the ratings of second class on reed chairs in straight carloads and third class when mixed with other chairs are unreasonable and unduly prejudicial because fiber chairs, with which complainant's product competes, are accorded the fourth-class rating. The premise of this contention is that fiber chairs are included under the common chair rating because not specifically excluded, as are grass, rattan, reed, or willow chairs. Fiber chairs are in no sense common chairs and were rated as furniture, n. o. i. b. n. at third class, which rating was also applicable on mixed carloads

of complainant's wooden, willow, reed, grass, and rattan chairs. The contention is therefore without merit. Since the hearing fiber chairs have been given the same ratings as grass, rattan, reed, and willow chairs.

We find that the ratings on reed chairs have not been shown to be unreasonable, unjustly discriminatory, or unduly prejudicial.

An order dismissing the complaint will be entered.

No. 5421.

PRIVATE WIRE CONTRACTS.

Submitted March 1, 1917. Decided August 3, 1918.

1. The lawfulness of the so-called private-wire service depends upon whether or not private-wire messages are among "such other classes as are just and reasonable" into which respondent carriers are authorized by section 1 of the act to classify messages transmitted over their wires.
2. Respondents are common carriers engaged in the transmission of intelligence and, as to their interstate business, are subject to the provisions of the act.
3. The so-called wholesale theory has no proper place in the rates of common carriers; and, in so far as charges for private-wire service are based upon this theory, we find that the classification is not just and reasonable.
4. Lessees of private wires are not common carriers; and the fact that in Morse private-wire service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires.
5. The Commission can not prescribe a minimum rate.
6. The record justifies the conclusion that respondents furnish private-wire service to all applicants therefor, at least to the capacity of their spare facilities, without discrimination and in the order of the application.
7. The record does not sustain the conclusion that the Morse private-wire service is a wholesale service.
8. The character of the Morse private-wire service differs from that furnished over the public wires and, stripped of certain abuses, may be recognized as a separate class of service available to the public upon reasonable compensation.
9. The Morse private-wire service is not shown to be unjustly discriminatory or unduly prejudicial to users of respondents' public telegraph service.
10. An abuse which must be removed is the provision in the private-wire contracts of one respondent that in time of interruption to the private wires the public wires can be used at half the regular rates.
11. There is no proper analogy between private-wire service and the practice of aggregating shipments into carload lots and shipping them at carload rates discussed in *Int. Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S., 235. It seems proper, and from a practical standpoint and in the interest of the public necessary, to apply some reasonable restrictions to the private-wire service. Respondents are justified in inserting in the contract for private-wire service a provision restricting the use of instruments and facilities provided to the transmission of messages concerning the business of the lessee or lessees and providing that messages shall not be transmitted for other persons or firms. This is not to say that it is unlawful for two or more persons to unite in securing private-wire service where all are named as lessees.

12. The record warrants the conclusion that in rendering Morse private-wire service and the public message service at their present rates respondents are furnishing the more valuable service at a relatively lower charge, contrary to recognized principles of classification.
13. As the charges for messages other than by private wire are not in issue, and we can not assume that rates for the latter should be increased rather than that those for sending day messages should be reduced, we shall enter no order in this respect. Respondents should consider whether or not their rates for Morse pivate-wire service should be revised.
14. The record discloses no essential difference between the private-wire talking service and the toll service furnished by the Bell company, and we are of opinion that the classification of messages into private-wire talking service is not a just and reasonable classification.

Rush Taggart, *Albert T. Benedict*, and *F. W. Lineau* for Western Union Telegraph Company; *Ralph H. Overbaugh*, *Jacob E. Dittus*, *William W. Cook*, and *Frank R. Shattuck* for Postal Telegraph-Cable Company; and *D. A. Frank* and *N. T. Guernsey* for American Telephone & Telegraph Company, respondents.

Henry S. Robbins and *John Hill, jr.*, for Grain Receivers' Association of the City of Chicago, complainant.

Chester Arthur Legg for various brokers and commission merchants; *Albert H.* and *Henry Veeder*, *R. C. McManus*, *R. D. Rynder*, and *Thomas J. Keogh* for Swift & Company; *Carter*, *Ledyard & Milburn* and *Walter F. Taylor* for James Laidlaw and others as a committee representing private wire lessees; and *Henry Wollman* for Logan & Bryan, interveners.

Clarence J. Shearn and *M. DeWitt* for International Magazine Company; *William E. Ward* for Harper & Ward; *George Shepard* for grain receiving firms of Milwaukee, Wis.; *Frederick Sass* for Finley Barrell & Company; *Luther M. Walter* and *L. M. Greenberg* for Nelson Morris & Company; and *W. R. Brown* for Sulzberger & Sons Company.

Report of the Commission.

Hall, *Commissioner:*

This is an investigation by the Commission on its own motion following an informal complaint filed by the Grain Dealers' National Association. The order of investigation, as amended, is as follows:

Upon complaint that under the terms of private-wire contracts of the Western Union Telegraph Company use is made of its public wires at less than the published tariff rates and that persons other than the parties to the contracts frequently use the private wires of lessees for the transmission of private messages free of charge, in violation of the act to regulate commerce as amended:

It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by the Commission on its own motion into and concerning contracts for private telegraph and telephone wires, and the rates, rules, and

regulations therefor and the practices thereunder, with a view to the issuance of such order or orders as may be necessary in the premises.

It is further ordered, That the American Telephone & Telegraph Company, Western Union Telegraph Company, and Postal Telegraph-Cable Company be, and they are hereby, made respondents herein, and that this proceeding be set for hearing at such times and places as the Commission hereafter may direct.

Pursuant to this order, extensive hearings were had in Chicago, Ill., and New York, N. Y., briefs were filed and argument was had before the Commission.

The American Telephone & Telegraph Company, hereinafter termed the Bell company, and the Western Union Telegraph Company, hereinafter called the Western Union, bore the burden of defending the practices under investigation. The third respondent, the Postal Telegraph-Cable Company, hereinafter designated the Postal, takes the "position that this Commission ought to put a stop to the leasing of wires to those lessees who can in turn sublet it or do sublet it to others." The representative of the Postal, upon being asked whether he approved the leasing of wires, assuming that all subleases had been eliminated, said: "If they can be safeguarded yes, and prevent subletting and the sending of contraband."

The Grain Receivers' Association of Chicago, hereinafter called the receivers' association, composed of grain merchants who are engaged almost exclusively in what is known as the cash grain trade in Chicago—that is, the purchasing or securing on consignment of grain at country points tributary to Chicago and its shipment to and sale at Chicago—appeared by counsel and assumed the rôle of complainant.

A number of lessees of private wires intervened in support of the practice.

The receivers' association "asks an order requiring the respondent companies to cease to give, by lease or otherwise, the exclusive use of their interstate telegraph wires to persons other than the press." Or, as stated by its counsel, "What we ask is practically an abolition of this practice of leasing wires, or, as I shall show you later, by fixing the rate of the service to conform to other service, and that will make the rental so high that the practice will disappear."

The three respondents are corporations, organized under the telegraph-incorporation law of the state of New York, and chartered to engage in the telegraph business. This is the usual public business of the Western Union and the Postal. The Bell company proper, except as hereinafter noted, is engaged only in the telephone business.

Each of the three companies enters into contracts with persons for what are popularly known as private or leased wires. These terms are not strictly accurate. Respondents do not lease any partic-

ular wire. The contracts, while differing in text, provide that the companies will furnish a "circuit"—that is, a wire or wires, instruments, and electrical energy—for the transmission of messages between the points and offices named during the hours specified in the contract, subject to the conditions therein set forth. The contracts provide for the location of the terminals in the offices of the lessee. Under appropriate provision therefor other stations, known as "drops," may be located at points on the circuit intermediate to the terminals. Respondents maintain the necessary equipment in good working order, but the operators, in the case of leases for "Morse service," are employees of the lessee, although they must be satisfactory to the lessor. For convenience we shall use the popular term and refer to these leased circuits as private wires.

The private-wire service may be either telegraphic or telephonic. In the former, messages in Morse characters are transmitted and the service is customarily known as Morse service. The latter is usually called talking service.

All three respondents offer Morse service to private-wire lessees. This is the only telegraphic service rendered to the public by the Bell company, although that company furnishes telegram toll service to any telegraph company engaged in a general public commercial telegraph business which has executed the contract required by the Bell company. The Bell company alone furnishes talking service. The latter may be divided into three clases—viz: Full talking, half talking, and short-period talking service. The Bell company's service is furnished to local city terminals through its subsidiary local telephone companies, but the private-wire contracts are made with it alone.

No witness could say when private-wire contracts for Morse service originated. Such contracts have certainly been made for more than 30 years. The Bell company has furnished this service from the time it started in business, and the other respondents had such contracts before that company existed. Private talking service, while of more recent origin, has been furnished for a number of years.

Under contracts for Morse service a circuit is provided each morning at a stated time for the exclusive use of the lessee in accordance with the terms of the contract. The lessee transmits messages through his own telegraph operators, without interference by the lessor. The contracts call for an uninterrupted daily service between the hours named, and abatement of rental is provided if the service is interrupted for more than a specified minimum period of time. One company also provides that at such times the lessee may send messages over the public wires at one-half the usual charges.

This is said to be a dead letter at the present time, but was one of the matters specifically mentioned in the informal complaint.

The following tables based upon statements by the Western Union and the Postal for the year ended April 30, 1914, and by the Bell company for the year ended May 31, 1915, show the extent at that time of the Morse service:

Morse-service mileage.

	In private wire service.	In public wire service.	Totals.
Western Union	47,969	926,504	972,473
Postal	17,283	245,695	262,978
Bell company	140,477	500,000	[1] 640,477
Total	205,729	1,672,199	1,877,928

[1] Includes 250,000 miles of telephone circuits, each of two wires, making 500,000 miles available for superimposed Morse service, although not so used at present time.

Morse-service annual revenues.

	From private wires.	From public wires.	Totals.
Western Union	$1,064,837.66	$38,640,009.47	$39,724,847.13
Postal	626,034.36	7,851,760.99	8,477,894.35
Bell company	[1] 2,218,638.23	[2] 9,411,423.66	11,630,061.89
Total	3,929,510.25	55,903,203.12	59,832,713.37

[1] Includes only the revenues of the Bell company; not of its subsidiary local companies.
[2] Not Morse service, but included for purposes of comparison.

Although Morse private-wire service had been furnished by the other respondents for some time before the Bell company entered that field, the latter company has gradually increased its business until in 1914 it earned considerably more than half of the private-wire revenue of all the respondents, whereas 10 years before its proportion had been about 28 per cent. During the same period the private-wire revenues of the other respondents greatly declined.

Full talking service is thus described in a circular of the Bell company:

> Full talking service consists of the full use of a telephone circuit with terminals, drops, and such other facilities of the company as are used for telephonic communication, between the stations named, during each day or night, or continuously for the period specified in the contract for such service.

It is further stated that under the contract one end of a full talking circuit may terminate at a switchboard in the company's operating station instead of in the patron's office, thus permitting him to call for any telephone number within the local exchange area of the operating station and, at his option, allowing any telephone subscriber within the local exchange area to call for connection with the

full talking circuit. Such service is furnished at one end of the circuit only, and additional charges are made for the special exchange service and incidental expense.

In telegraphic communications one metallic wire is used, while for telephonic transmission two are needed. The half talking service is based upon the theory that the lessee requires the use of only one-half the facilities of a full talking circuit all the time, or all the facilities of such a circuit for one-half the time. Under this contract the patron may call for exchange service as often as he desires, the circuit being opened with as little delay as possible and released after each conversation, the aggregate service being limited, however, to 300 minutes on any day.

The contract for short talking periods gives the lessee a circuit at a certain fixed time or times during each day. There is no service of this kind between 10 a. m. and 12 noon, as the "peak of the load" of telephone toll service is reached between those hours. During other hours of the day or night the short-period rates are graded downward from the average toll basis, the lowest rate being at night when the use of the wires is at its minimum. It is said that the short-period rates are designed to promote the use of the facilities at such times.

Talking service is not used extensively. Only 32 leases for full talking service are shown of record. The average length of the circuits is 97 miles, and the maximum 218 miles. The record shows 38 lessees of half talking service. The average length of these circuits is 170 miles and the maximum length 424 miles. Contracts for short-period talking service are more frequent. Many of these provide for daily periods of 15 minutes.

The rate for private-wire Morse service is usually $20 per mile per annum, the mileage being that of the short-line railroad between the designated terminals and via the route of the drops, if there are any. It appears that in some of the southeastern states the rate is $25 per mile per annum. There are occasional "flat" or "scheduled" rates between certain cities which closely approximate the mileage rate. For the addition of drops en route there is a charge of $500 per annum each, except that the charge for New York to Chicago service includes one drop en route, with additional drops at the rate of $1,000 per annum each.

Where a drop is desired at a point not directly en route, the service is performed over a branch line, termed a "leg," extending from the direct line to that point. For such service the charge is at the customary rate for the leg mileage plus the charge for the additional drop.

The Bell company furnishes Morse service for the full day at the half-talking-service rate. Five-sixths of the contracts for half talking service cover Morse-service operation. In some instances where Morse service is had under the contract for half talking service, the lessee is also allowed a talking service for a stated number of minutes immediately before opening and after closing the Morse circuit.

Rates for the various kinds of talking service in effect in 1915 are shown in the following table:

Talking-service rates.

	Rate per mile per annum.
Full talking service:	
24 hours daily	$40
Day service, 8 a. m. to 6 p. m.	40
Night service, 6 p. m. to 8 a. m.	20
Half talking service:	
Day or night service, continuous or noncontinuous, for 300 minutes, first 100 miles	25
Same for each additional mile	20
Short-period talking service (basic hourly rate for daily service, 6 days weekly):	
From 12 midnight to 1 a. m.	2
From 1 a. m. to 2 a. m.	2
From 2 a. m. to 3 a. m.	2
From 3 a. m. to 4 a. m.	2
From 4 a. m. to 5 a. m.	2
From 5 a. m. to 6 a. m.	3
From 6 a. m. to 7 a. m.	4
From 7 a. m. to 8 a. m.	5
From 8 a. m. to 9 a. m.	6
From 9 a. m. to 10 a. m.	7
From 10 a. m. to 12 m., no service and no rate	.....
From 12 m. to 1 p. m.	10
From 1 p. m. to 2 p. m.	10
From 2 p. m. to 3 p. m.	10
From 3 p. m. to 4 p. m.	10
From 4 p. m. to 5 p. m.	7
From 5 p. m. to 6 p. m.	6
From 6 p. m. to 7 p. m.	5
From 7 p. m. to 8 p. m.	4
From 8 p. m. to 9 p. m.	3
From 9 p. m. to 10 p. m.	2
From 10 p. m. to 11 p. m.	2
From 11 p. m. to 12 midnight	2

For fractions of hours service is granted at proportionate rates. Where the service is desired for less than six days per week the rate is found by the following rule:

Divide the annual rate per mile for six days per week by 6, multiply by the number of days per week desired, and add the proper percentage from the following table:

Days per week desired.	Add.
	Per cent.
1	80
2	40
3	30
4	20
5	10
7	None

It is also provided that service may vary on different days of the week as to amount of time taken and hours of service, requiring different daily rates.

Private-wire leases have been divided into those to (1) common-carrier railroads, (2) the public press, (3) bankers and brokers, and (4) industrial concerns. There is no complaint here concerning the first two classes. The common carriers' use of private wires is quasi public rather than a strictly commercial use. Section 1 of the act to regulate commerce specifically provides that press messages may be separately classified. We find no difficulty in concluding that it is not unlawful for respondents to handle messages for common carriers and the public press through the medium of existing private wire arrangements. Further consideration of the questions raised in this proceeding will be restricted to arrangements between respondents and lessees other than common carriers and the public press.

At the time of the hearing approximately 80 per cent of all Morse-service leases were taken by bankers and brokers, who operated 80 per cent of the leased mileage and paid 80 per cent of the leased-wire rentals. Over 86 per cent of all private-wire stations were on bankers' and brokers' wires. If to the bankers and brokers are added the meat packing and the iron and steel industries, the aggregate rises to 89 per cent of all leases and 96 per cent of all mileage and stations. These lessees numbered 144. Throughout the whole United States, as served by these respondents, the Morse-service lessees other than bankers, brokers, packers, and iron and steel industries numbered only 39, and operated only about 4 per cent of all the leased mileage here under consideration. Practically all of the industrial lessees of Morse service are among the larger and more powerful houses in their respective lines.

Bankers and brokers also take the talking service, but the majority of lessees of such service were in other lines of business. This was particularly so as to contracts for short-period service. About 27 per cent of all talking-service contract revenues was paid by bankers and brokers.

Private-wire systems were found throughout the country, but by far the greater mileage was in the northern states, from the north Atlantic coast to the Missouri River. Private talking service was rarely used outside of the north Atlantic states.

A few of the larger Morse wire systems, numbered for convenience, are described below:

System 1, leased by a banking and brokerage house, operated four circuits from New York, N. Y., via four different routes to Chicago, Ill., and one circuit thence through Salt Lake City, Utah, to San

Francisco, Cal. At Salt Lake City there was connected a circuit running through Butte, Mont., and Seattle, Wash., to Vancouver, British Columbia. Another part of this same system extended from Chicago north through St. Paul, Minn., to Winnipeg, Manitoba, and south through Memphis, Tenn., to New Orleans, La. There were numerous short wirés connecting with the circuits above described, and a large number of terminal and intermediate drops.

System 2, another brokerage lease, extended westward from New York, and included three wires to Chicago, via different routes, and one wire thence to St. Louis, Mo. There were also wires from New York to Buffalo, N. Y., one from Boston, Mass., through New York to Baltimore, and another from New York through northeastern Pennsylvania to Binghamton, N. Y. This system also included short wires and legs and, like most brokers' systems, had numerous drops.

System 3 also served the brokerage business, and was composed of two circuits from New York to Chicago, and others from New York to Montreal, Province of Quebec, to Boston, Mass., and to Philadelphia, Pa. Like system 1 this also reached from Chicago to Winnipeg, and there was a circuit between Chicago and St. Louis.

System 4 may be described as a brokerage lease well adapted to facilitate trading in grain. From Chicago a line to the northwest extended through Winona, Minn., to St. Paul and Minneapolis, Minn. A wire to the west reached Des Moines, Iowa, Omaha, Nebr., and Kansas, City, Mo., while one to the south served Peoria and Springfield, Ill., en route to its terminus, St. Louis. Terre Haute, Ind., was reached by a leg from Springfield. The system included a wire from Chicago through Pittsburgh and Philadelphia to New York, and reached Baltimore by a leg from Philadelphia.

System 5 served a packer with headquarters in Chicago. From that point one circuit ran to Omaha and Sioux Falls, S. Dak., a second reached St. Joseph, Mo., and Kansas City, while a third passed through Des Moines to Kansas City, and thence to Fort Worth, Tex. A fourth circuit connected Chicago and St. Louis. From Chicago a wire through Pittsburgh reached New York and Boston. A leg from New York to the south extended through Philadelphia to Baltimore.

Another meat packer was served by system 6, which covered much the same territory west of Chicago as did system 5. East of Chicago two circuits were operated via different routes to New York, each with drops on the way.

In the iron-and-steel industry system 7 consisted of wires via the same route from New York to Chicago, and one wire thence to St. Louis; while system 8 was comparatively small, reaching only

from Chicago through Cleveland, Ohio, to Youngstown, Ohio, with a leg to Muncie, Ind.

The larger systems serving industrial establishments usually connected general offices with manufacturing plant and distributing stations. The smaller industrial lessees generally used a private wire to connect office and plant only.

It has already been said that private talking service was confined almost entirely to the north Atlantic states. As compared with the private Morse wires these talking-service systems were quite short. They were utilized largely to effect ready communication between offices and manufacturing plants of the lessees, in the same manner as the Morse wires were used by industries. Talking service of bankers and brokers seemed to be an incident of banking business rather than of brokerage; the reverse is true of the Morse wire leases to such patrons, the brokers preferring Morse to talking service.

The private wires of bankers and brokers were used primarily for the transmission of orders and reports of sales, incident to exchange trading, and of communications relating to such orders and sales. Next in importance was the transmission of exchange quotations. When the wire was not in service for any of the foregoing classes of matter the operators filled in with news and gossip. This included information concerning the state of the market, items from the morning newspapers, weather reports, political news, exchange rumors, sporting news, and other miscellaneous items which the broker posted in his office for public information to stimulate trade directly or indirectly. This gossip reached the surrounding country by telephone, and some of it eventually found its way into the newspapers. The order of precedence which placed orders first, quotations next, and gossip last was apparently based upon the financial return to the lessee.

The industries leasing private wires used them in the transmission of interdepartmental communications between general offices, manufacturing plants, and distributing stations, which were the departments usually connected by such wires. To some extent such systems are analogous to the so-called P. B. X., or private-branch exchange service, offered by telephone companies. The P. B. X. equipment, however, is usually located upon the premises of the lessee, and installed for his private use, whereas the private-wire equipment is a part of the quasi-public facilities of a common carrier, was as a rule installed as such, and is entitled as a matter of law to be located under the right of eminent domain.

The interdepartmental communications which were transmitted over the private wires of industrial lessees generally included matter

that was not urgent and which would not ordinarily have been sent over public wires at message-toll rates, some lessees stating that not 5 per cent of the matter sent over the private wire would have gone over public wires. In other words, having the wire available for maximum capacity use, the lessee used it for matter that would otherwise have been mailed whenever it was not needed for telegraphic dispatches.

The highly expeditious service of the private wires is generally recognized. In the brief of one respondent reference is made to "the almost instantaneous service over leased wires." The ever-ready facilities, the elimination of messenger-boy service, the restricted vocabulary adapted to the needs of a particular line of business only, the possibility of abbreviation in the message proper and of practical elimination of address and signature, the freedom from the necessity for enciphering, and the great proficiency in manual operation attendant upon handling the same class of messages day by day, are conducive to a high-class private service which the public wire can not give. The record does, to be sure, indicate as affecting the brokerage business that the public-wire service between certain commercial exchanges is at least as rapid as any private-wire service, but, granting this, the former is a class of service which is available to only a few.

The record shows a usual message-and-answer speed of from two to four minutes between New York and Chicago, with occasional service in much shorter time. Four minutes between New York and San Francisco is a frequent record, and two or three minutes between Chicago and San Francisco. Between Chicago and a country grain station in Iowa message and answer were handled in five minutes.

These are instances of the service on brokerage wires, with a trade effected between messages. It is interesting to note that the public-wire service of one respondent between Chicago and the same country grain station in Iowa shows an average record of one-half hour each way. Brokers operating private wires solicit the grain trade and point to their highly expeditious telegraph service as a reason for preferring them to their competitors who use public wires.

An industrial concern having its financial office 1,000 miles from its plant is able over its private wire to obtain almost continuous and immediate message-and-answer service between office and plant daily, which, its representative states, is impossible over the public wires.

The lessees employ and directly control the telegraphers operating the private wires. These are as a rule men of more than average skill. The nature of the service results in the constant employment in messages of what may be termed brokerage or industry idioms incident to the particular business, and frequently to the abbrevia-

tion of these expressions. The greater proficiency due to using a limited vocabulary is reflected not only in greater speed but in greater accuracy in sending and receiving messages.

The publicity attending the transmission and handling of messages sent over public wires, and the accounting therefor, is absent in the case of private wires, thus rendering the use of code unnecessary. Operators, as well as the senders and receivers of private-wire messages, are in the employ of the lessee and his correspondents and have a direct interest in their welfare, thus insuring a high degree of secrecy.

It is said that the matter transmitted over some industrial wires is of so technical a nature that the accuracy of service over the public wires can not be depended upon. Telegraphic discussions of chemical formulæ and artistic designs are instances cited as possible over private wires, but impossible, at least in the view of the lessees, over public wires. Abolishment of private wires would make it necessary to conduct such discussion by mail, it is said.

In short, this service is recognized as being not only highly efficient but the most efficient service generally available for the transmission of intelligence.

The element of economy in private-wire operation is something as to which respondents and lessees alike failed to enlighten us. While some lessees admitted that the economy of leasing wires is worthy of consideration, for the most part the lessees base their preference for this service upon its higher efficiency and, in the case of brokers, the new business that may result from the private wire.

The efficient operation of respondents' telegraph lines requires them to provide and maintain wire facilities in excess of the maximum demand therefor; or, in other words, these facilities must be more than sufficient to accommodate the peak of the load of business each day. It necessarily results that the carrier has surplus facilities at all times, the surplus, of course, varying during the day as the business fluctuates. The telegraph companies assert that the circuits leased for private use are these surplus facilities and that the leasing thereof does not in any way reduce the facilities necessary for the transmission of the maximum amount of public business at all times.

An application for a private wire is made to the commercial department of the telegraph company. It is referred to the traffic department which determines whether or not there are surplus facilities available between the termini desired. If not, further study is made to ascertain whether or not surplus facilities can be created by rerouting public business between the points which the private wire is to serve. If it is concluded that no facilities are available, the company endeavors to rent them from its competitors. Failing

in all ways to create the necessary facilities, the application is refused unless the applicant will sign a year's lease and pay six months' rental in advance, in which case respondents will construct the necessary facilities.

A somewhat different situation obtains with respect to the Bell company's leases for Morse service. That company's principal public service is to provide the means for transmission of intelligence by telephone. It has been found that telegraphic circuits can be superimposed upon telephone wires. Thus, the Bell company can secure a Morse circuit on each telephone wire, and practically all its Morse private-wire circuits are superimposed upon the wires used for telephone purposes. Wires so used lose none of their effectiveness in telephone service and in long-distance service are highly economical. The Bell company designates the facilities leased by it for Morse service as a by-product, rather than as surplus facilities.

But manifestly the facilities of the carriers are not without limit. There come times almost daily, when, on account of storms or lesser atmospheric disturbances, accident, or other cause, telegraph and telephone communication is interrupted. When such interruptions are slight the remaining facilities are apportioned to handle the business in accordance with what are termed precedence lists, which govern the priority by which business shall be transmitted. Under these lists the important public wires take precedence. In case of complete prostration of wires the precedence lists are of little value. The aim is to transmit the messages, and to accomplish this the officials in charge seize upon the most promising means. Thus private wires may be taken for public use.

The record of the service in which the wire facilities of telegraph and telephone companies are continuously used is known as the wire log. Such records have been studied by an examiner of this Commission in conjunction with representatives of the respondents, and by agreement of all parties of record the result of that examination is before us.

It appears that after either the partial or complete prostration of telegraph wires the private-wire service is restored more rapidly than the public service. It also appears that public wires are appropriated for private use on such occasions. This practice was frankly admitted by witnesses for the Postal, who added that competition between the carriers demanded such appropriation. The examination made of the effect of this shows that at such times of partial interruption there was a somewhat greater delay in the transmission of public messages over public wires affected. No attempt was made to measure the delay in the transmission of public messages

at times of complete prostration, owing to the widespread effect of such interruptions.

The routing of private-wire messages is somewhat restricted on account of the drops en route, and such messages can not well be diverted to other routes. There are no such limitations on the public business, and this is frequently rerouted in times of interruption. Where the new route is extremely circuitous it is said that this is productive of delay and greater possibility of error in transmission.

Wire prostrations do not have the same effect upon the service of the Bell company as upon the service of the other respondents. Telephone transmission requires a much more perfect electrical circuit than does telegraph transmission. An accident which will render telephone communication impossible may leave the wire substantially perfect for Morse service. The Bell company uses Morse service in locating and removing the causes of interruptions to its telephone circuits. These conditions enable the Bell company to continue to furnish Morse service to private-wire lessees at times when its public telephone toll service between the same points is not in operation.

The private-wire contracts contain provisions restricting the use of the circuit or wire to the lessee's own business. Thus the Western Union contract provides:

> It is understood and agreed that said wire herein provided to be set apart for the benefit of the second party as aforesaid shall be used by it only in the transmission of messages concerning its own business and affairs, and that the said line shall not either directly or indirectly be used in any manner for the transmission of messages for the public or for any person or persons other than the second party.

That of the Postal is as follows:

> It is understood and agreed that said circuit herein provided to be set apart for the benefit of the said lessee as aforesaid shall be used by it and its employees only in the transmission of messages concerning the business and affairs of the said lessee, and that the same shall not be used in any manner for the transmission of messages for the public, or for any person or persons other than the lessee, nor for any illegal use, and the opinion of the lessor that said circuit is being used for illegal purposes shall be binding and conclusive on the lessee.

The contract of the Bell company reads:

> The right of the subscriber is to use the instruments and connecting wires, where the company may place them, under such rules as the company may, from time to time, prescribe, *for the purpose of personal communication between persons present at the stations named below upon the subscriber's individual and private business.*

The object of these rules is to prevent the transmission of what is known as contraband. In its brief one of the respondents says:

> Contraband, as we understand it, is business in behalf of third persons having no right to the use of the wire and passing over the wires either as a matter of courtesy or for a per-message consideration.

The record warrants the statement that these provisions are practically dead letters. The Bell company admits that its requirement is not enforced.

Although the contracts restrict the location of terminals or drops to the offices of the lessee, all three respondents put terminals or drops in the offices of third parties, designated by the lessee as his "correspondents," at the lessee's direction. The term "correspondent" is very elastic. The Western Union and the Postal apparently insist that the correspondent must be engaged in the same line of business as is the lessee, but the Bell company does not impose this condition.

Aside from the location of terminals and drops there is the further question of the matter transmitted. As a check upon this, and to determine whether or not the messages transmitted are within the terms of the contract, respondents claim to censor the messages. Only the Western Union contract specifically provides for censoring.

Effective censorship would require the constant employment of a competent operator listening to the messages transmitted. Even then it would be difficult to distinguish between the messages of the lessee and those of another person engaged in the same business, and the use of code would render detection of contraband practically impossible. As a matter of fact, none of the respondents attempts this constant supervision. The nearest approach to it is the occasional and sporadic use of such an operator.

The Bell company insists that it has an effective censorship through the medium of its repeater stations, where all Morse messages are repeated under the supervision of its own employees, and somewhat similar systems are used by the other respondents. Here, also, of course, constant supervision of each wire would be necessary to censor all messages. At least one lessee claims that by the use of what is known as a "telltale," an arrangement for recording messages on a tape, all matter transmitted could be recorded and examined by respondents. It should be noted that a practical telegrapher employed by respondents counts the telltale worthless. It is even admitted that the inviolability of the contract could hardly be guaranteed even if the operators were respondents' employees. In the last analysis respondents depend upon the good faith of the lessees rather than upon any censoring to insure adherence to the contract.

We proceed to a review of the actual use made of the private wires as shown by the record.

One circuit between New York and Chicago, leased by the Bell company to a brokerage firm, also served 10 other bankers and brokers. These had no contractual relations with the Bell company, but made their arrangements with the lessee, paying him a certain sum per annum for the service. In some instances the service thus sublet was a telegraph service rendered over a short or pony wire, installed by the carrier at the request of the lessee, extending from a connection with the leased circuit to the office of the sublessee. In other instances the service was effected by means of telephone communication at the terminals. This lessee termed all these sublessees his "correspondents, more or less." Apparently economy was an important consideration with the lessee and the sublessees. It seems that this arrangement was known to the lessor and approved as within the terms of the contract.

Another lessee, a broker, sublet to a second broker admittedly not a correspondent. Each had in his offices in the terminal cities facilities for Morse transmission and each employed his own operators. The sublessee stated that his firm could not well afford to lease a circuit for its sole use. The consideration paid by him to the lessee was a fixed sum per annum.

Similarly, two of the leading packers divided a leased circuit between Kansas City and Fort Worth. The record shows other instances of subleasing for a stated consideration per annum and it is said that such arrangements have been common for 25 years.

In at least one case a lessee handled messages for others over the circuits leased by him on a per-trade basis. Here, again, the correspondent theory was relied upon. But frequently the transaction pertained in no way to the lessee's business, his only connection therewith being to transmit the necessary message or messages over his private system, receiving as compensation what is called a wire commission or, as some private users bluntly term it, a toll. This is merely an agreed share of the commission of the brokers who negotiated the trade over the private wire.

The wire commission is not charged on the basis of telegraph service actually performed, the agreed share remaining constant regardless of the number of messages necessary to consummate the trade. This particular lessee claimed that the telegraph service rendered by him in such a transaction was not confined alone to the messages relating thereto, but included quotations and gossip over his wire on the theory that while not regularly supplied by him to the parties to the transaction it was posted in the private-wire office and therefore available to them and to their customers.

Some lessees claimed that the carriers knew in many cases that the lessee had not enough business to justify the expense incurred and were willing to have the service sublet. In fact there seemed to be considerable doubt as to just what was permitted.

Some of the instances of messages transmitted for persons other than the lessee, and sought to be justified, are extreme. For example, a Chicago broker arranged for one drop in the office of a correspondent in Des Moines and another drop in the office of a second correspondent in Milwaukee. These two correspondents had frequent transactions with each other over the private wire. Neither had any direct dealing with the lessor carrier and neither paid for any expense connected with the service except the wages of his operators and incidental expenses. The only consideration moving to the lessee from these correspondents was the possibility that their trades would stimulate others in which the lessee's services as a broker might be required.

The record warrants the conclusion that almost any message will be transmitted over a broker's wire if the lessee can perceive any direct or indirect interest in the transaction, or in a trade that may follow, however remote.

Beyond the instance already mentioned, where two packers used a wire between Kansas City and Fort Worth, the record has but little to indicate use beyond the terms of the contract by industrial lessees of wires. It would seem that the nature of their business permits such lessees to operate well within the contract provisions.

Throughout the proceeding much was said of so-called courtesy messages—that is, messages transmitted as a matter of personal favor for customers or employees of lessees, and not in any way pertaining to the lessee's business. These are said to be fast diminishing in number. Courtesy messages have sometimes been handled by lessees for their competitors, when the latter for one reason or another have been unable to secure prompt service over the public wires. As a rule no compensation is asked for such services, but instances are cited where such message service has been paid for at the regular toll rates of the telegraph companies.

The foregoing statements regarding contraband have reference to private Morse wires only. The contract of the Bell company for full talking service contains the same provision as to what messages may be transmitted as does the half talking contract, under which that respondent leases its Morse service. Little is said of record concerning the matter transmitted over talking systems. That little is to the effect that the carrier can not tell whether the contract is abused or not. The lessees' good faith is relied on, although there probably are ways of censoring.

Diligent inquiry throughout this proceeding has failed to disclose the source of the mile-per-annum rate upon which private wires are leased. Likewise, neither the respondents nor the lessees have enlightened us as to the comparative reasonableness of that rate and the rates charged by respondents for service over the public wires.

In estimating the value of the service in its bearing upon the reasonableness of the rate two theories might be advanced—first, that the actual use be taken as the standard, and, second, that the maximum capacity of the facilities be the standard. It is natural that a lessee should endeavor to use the facilities to their maximum capacity. Moreover, the use would vary with the different lessees, and from day to day, so that it would be practically impossible to secure data that would be representative of all leases or upon which conclusions even approximately fair to respondents, lessees, and the public could be based. In our opinion the only practicable or fair basis is the maximum capacity of the facilities. The use made of them seems rather a matter for consideration by lessees, or prospective lessees, to determine whether or not the attendant expense is justified by the needs of their business.

As bearing upon the existing rates, we shall also consider such evidence of use as is before us.

The average day message sent over public telegraph wires contains 11 words in the body and 14 in the address and signature. On a conservative estimate the average telegraph operator can send or receive about 40 such messages in an hour. In private-wire messages the address and signature usually consist of one word each. On the basis of the information transmitted it may be said, then, that 25 words over a private wire would contain the equivalent of the body of two public-wire messages aggregating 25 words each. The greater possibility of abbreviation and the use of expressions peculiar to a particular business enhance the advantages of the private wire.

It thus appears that the use of operators of average ability on the private wires would give an average capacity per hour equivalent to the information contained in 80 average messages sent over the public wires between the same points. The capacity of the private wires is further increased by the employment of operators who are, as a rule, especially in the offices of brokers, far above the average in ability. It should be borne in mind, of course, that the employment of these skilled operators increases the expenses of the lessees.

Another advantage accruing to the users of private wires is that operators at the drops along the route can listen in on messages passing between the terminals. Thus matter dispatched only once may

be received simultaneously at several points, increasing the capacity of the wire. The distribution of quotations and market gossip is generally made in this way.

The expenses of the lessee for this service, in addition to the rental, are operators' salaries, incidental expenses such as stationery, and a fair proportion of office rent, heat, and light. The rates for private-wire service are of record. Operators' salaries are not given for the individual leases, but the record indicates that at the time it was made the average salaries per annum would not exceed $1,500 for those employed by brokers and $1,000 for others. Not infrequently private-wire operators at country stations act also as office managers.

No lessee has offered figures covering the incidental expenses, although one stated that the expenses other than rental usually equaled the rental. As the rental varies with the length of the wire while the other expenses bear no relation to such length this hypothesis can not be accepted for general application. It seems improbable that the incidental expenses would exceed the salaries of the operators, and, merely to secure some basis for comparison, we shall assume in the following illustrations that they would be the same in amount.

Applying expenses reached in this way to a short industrial line, assumed to be in use 312 days per annum from 8 a. m. to 5 p. m., with one hour for midday meal deducted, we have the following:

Rental, 53 miles at $20	$1,060.00
Salaries, 2 operators	2,000.00
Incidental expenses	2,000.00
Total expenses per annum	5,060.00
Total expenses per day (312 days)	$16.21
Wire capacity per day of 8 hours ... messages	640
Expense per message ... cents	2.5

It is said that this particular circuit was in use only about two-thirds of the day. On this basis the capacity would be 426 messages daily at a cost of 3.8 cents each. The public-message rate for 10 words between the same points was 25 cents.

Similar results are reached in considering private-wire operations in other sections. In the middle west we find a brokerage wire between cities where the public telegraph rate is 40 cents per 10-word message. Assuming the broker's wire is used to capacity for the six hours from 9 a. m. to 3 p. m., or a little later, during which the record shows such wires are normally in service, we may compile this statement:

Rental, 498 miles, flat rate	$11,240.00
Salaries, 2 operators	3,000.00
Incidental expenses	3,000.00
Total expenses per annum	17,240.00
Total expenses per day (312 days)	$55.26
Wire capacity per day of 6 hours ... messages	480
Expense per message ... cents	11.5

These brokers' wires are leased from 6 a. m. to 6 p. m., but never so used. On the other hand, it must also be remembered that the capacity of these operators is greater, no doubt, than that on which the above computation is based. Furthermore, there are intermediate drops on this wire at two points, and for the additional rental of $500 per drop per annum and the additional operators and incidental expenses, there is, as already explained, a large increase in the wire capacity.

One broker's private wire extended from Chicago to San Francisco with drops at Omaha, Nebr., Salt Lake City, Utah, and Los Angeles, Cal. Assuming that it was used to capacity six hours daily the expense per message between Chicago and San Francisco would have been as follows:

Rental, 2,466 miles	$49,320.00
Salaries, 2 operators	3,000.00
Incidental expenses	3,000.00
Total expenses per annum	55,320.00
Total expenses per day (312 days)	$177.31
Wire capacity per day of 6 hours ... messages	480
Expense per message ... cents	37

The 10-word message toll rate between the same two points was 75 cents. The expense of this wire, so far as Chicago-San Francisco business is concerned, was increased by the very indirect routing via Los Angeles. Here, again, the operators are of more than average ability, and the capacity of the wire is increased by reason of the drops en route.

Lessees who are brokers maintain that comparisons should not be based upon the public-message rates as quotations are not charged those rates and gossip would not be sent if it were necessary to pay those rates. The first objection is based on the fact that the telegraph companies through their commercial-news departments furnish a quotation service at what are commonly called "C. N. D." rates. This is an entirely different class of service from the ordinary 10-word day-message service, and the rates are much lower. The quotations of the various exchanges are supplied by the carriers

under contracts whereby the exchanges reserve the right to reject any application for service. The charge for continuous daily quotations was $150 per month for each line of quotations. For example, the charge for continuous quotations on stocks, grain, and cotton would have been $450 per month. Each line of quotations is sent over a special trunk wire, and the subscriber must receive the quotations through his own operator, in his own office, and at his own expense. Chicago grain quotations would average about 3,500 words a day, the maximum being about 6,000 words.

This service for any line of quotations is available only at points along the line of the trunk wire, or at points which may be reached by extension not exceeding 90 miles. If the subscriber's office is more than 90 miles from the trunk wire, the service is charged for at the rate of $20 per mile per annum; and if a by-wire is not available, the service can not be rendered at points off the trunk line.

Market quotations are also furnished by noncontinuous service at rates much lower than the continuous-quotation rate, some being as low as $12 a month. This service entitles the subscriber to a statement of certain quotations at fixed hours during the day, delivered by messenger at destination.

The objection to the consideration of gossip has already been noted. Opinions of the various witnesses as to the value of gossip were not in accord, some considering it practically worthless and others urging that it is of considerable value to correspondents, customers, and the public at large. One broker counts it "highly valuable," while another deems it an "absolute necessity" in its effect on the trading public. Many lessees insist that it has a distinct business and news value.

It can not be said that it should be transmitted free over public wires, and there seems no reason for asserting that in estimating cost of service it should be assessed nothing on private wires. The gossip is transmitted, and in making computations there seems no alternative but to assume that gossip should pay the rate at which service most closely approximating that rendered is available to the public; that is, the day-message rate. While the value of the service is unquestionably a factor to be considered in establishing rates the value of a telegraphic communication is usually known only to the sender, and matter receiving the service accorded day messages on the public wires is charged for at the day-message rate, regardless of variations in value.

The record shows the details of two days' operations of a broker's wire from Chicago to Kansas City, Mo., with drops at Davenport,

Iowa, and St. Joseph, Mo. The expenses of this operation were as follows:

Rental of wire, including two drops, per annum	$11,000.00
Salaries of four operators	5,720.00
Total allocated expenses	16,720.00
Incidental expenses, estimated	5,720.00
Total expenses, per annum	22,440.00
Total expenses, per day	71.90

Based on the matter transmitted over that wire for two days, the average day's business would be as follows:

ORDERS AND REPORTS.

From—	To—	Equivalent of 10-word message.
Chicago	Davenport	16
Chicago	St. Joseph	13
Chicago	Kansas City	20
Davenport	Chicago	21
St. Joseph	Chicago	20
St. Joseph	Kansas City	2
Kansas City	Chicago	20
Kansas City	St. Joseph	1
		113

QUOTATIONS; GRAIN AND PROVISIONS; COTTON.

Chicago	Davenport	200
Chicago	St. Joseph	200
Chicago	Kansas City	200
		600

GOSSIP.

Chicago	Davenport	371
Chicago	St. Joseph	371
Chicago	Kansas City	371
		1,113
Total equivalent of 10-word messages		1,826

At this time there were no stock or bond quotations, the New York Stock Exchange being closed on account of the European war.

In computing the value of this service to the lessee the parties are wide apart, except in their agreement that the orders and reports should be valued at current public-message rates, and that at such rates the charge for those messages would be $41.05. The extremes of these values of the service compare thus, the maximum value being computed on behalf of the opponents of the private wires, and the minimum on behalf of the Bell company:

	Maximum.	Minimum.
Orders and reports	$41.05	$41.05
Quotations:		
Chicago to Davenport	60.00	9.00
Chicago to St. Joseph	80.00	
Chicago to Kansas City	80.00	
Gossip:		
Chicago to Davenport	111.30	No value.
Chicago to St. Joseph	148.40	
Chicago to Kansas City	148.40	
Total per day	669.15	50.05

In ascertaining the expense incident to the lessee's operation of his wire the opponents of the practice include only the rental and the operators' salaries; the Bell company adds about 20 per cent to that total to cover incidentals. The figures thus reached show $55.73 and $66.66 per day, respectively, for expense, and on this basis the opponents say that this lessee saves $613.42 per day in telegraph tolls, while the Bell company concludes that the lessee's private wire costs him $16.61 more daily than the real telegraphic matter would cost at current rates, commercial as well as day-message rates. It is suggested that this $16.61 is the lessee's payment for "additional efficiency."

Manifestly the proper value is somewhere between these extremes. It has been shown above that the daily expense of this wire may be conservatively taken as not more than $71.90. If continuous-quotation service were rendered to this lessee or his correspondents the rate for each office would be $300 per month for the two lines of quotations. As each line would be carried on a separate trunk wire there would have to be an operator in each office on each of the two wires. Under such circumstances the continuous-quotation service for grain and provisions, and for cotton, in Davenport, St. Joseph, and Kansas City may be estimated as follows:

Subscription for two lines of quotations:	
To Davenport	$300.00
To St. Joseph	300.00
To Kansas City	300.00
Salaries for six operators	750.00
Total expenses per month	1,650.00
Total expenses per day	62.32

It can not be contended, of course, that quotations to the extent of 2,000 words per day would be the equivalent of the continuous-quotation service which is available to the subscriber at this expense of $62.32, for the Chicago Board of Trade quotations alone average 3,500 words daily. But clearly the private-wire quotation service is superior to the carriers' noncontinuous quotations. One promi-

nent lessee says that the quotations sent over his private wires are "approximately continuous." Another sends such quotations as he considers necessary to keep his branch offices informed regarding fluctuations of the market. The private-wire continuous-quotation service is immediate and even though its quotations are not so extensive as the carriers' continuous service, it leaves the patron free to send such quotations as he desires. Quotations usually take precedence over gossip on brokers' private wires and as Chicago sent 3,716 words of gossip, it may be presumed that the quotations sent included all that the lessee desired. The brokerage business was extremely dull when these investigations were made, and it is fair to assume that usually the orders and reports would constitute a larger proportion of the total matter sent. The record shows one broker's wire which serves 10 sublessees and carries no quotations.

As it appears that all quotations desired were transmitted, it would, perhaps, be not unfair to say that even on the basis of the C. N. D. rates the quotation service was worth $62.32 daily. But, assuming that the quotations were worth one-third of that amount, $20.77, and estimating gossip on the basis of the day-message rates, we have the following cost for the best public service available for the transmission of this matter which is daily handled in a more efficient manner over the private wire at a cost not exceeding $71.90:

Orders and reports	$41.05
Quotations	20.77
Gossip	408.10
Total	469.92

There are instances of record where the use of the private wire is such that the same matter transmitted over public wires would cost less. For example, an insurance company leased a wire between New York and Chicago at an aggregate annual expense of about $21,000, while its messages would have amounted to about $17,000 per annum at public-message rates. A Chicago bank with a private wire between that point and New York is said to incur an annual expense in excess of $21,000 and to send matter which would, if sent over the public wires, cost about $9,000 a year. On the other hand, an eastern manufacturer is under an expense of about $4,480 per annum to send messages that would, at public-message rates, cost approximately $8,100.

The foregoing discussion of rates and costs to lessees has reference only to Morse wires. The record contains little concerning the practical operation of talking circuits, beyond the attempt of the representatives of the Bell company to show that talking service is in every way superior to Morse service for private-wire operation.

The talking service furnished by the Bell company consists in each case of the use of a telephone circuit with such other facilities of the carrier as are used for telephone communication between the stations named during the period specified in the contract. Its analogy, therefore, to ordinary long-distance toll service is apparent. This being so, it is of interest to observe the economy resulting from the use of talking service by contract, as appears from the following table, offered of record on behalf of the respondent Bell company, and showing the revenue yield from its various rates then in effect. The element of economy may be measured on the basis of the toll-message rate, which is based on a revenue of 2 mills per mile per minute:

Comparison of rates in mills per mile per minute.

TELEPHONE; 313 DAYS ARE USED TO THE YEAR UNLESS OTHERWISE STATED; TWO WIRES.

	Rates per mile per minute, one circuit.
	Mills.
The message rate	2.00
Short-period basic rate, $10 hour; if 10 minutes are taken	1.17
Public news telephone (365 days); if 15 minutes are taken	.86
Short-period basic rate, $7 hour; if 10 minutes are taken	.82
Short-period basic rate, $6 hour; if 10 minutes are taken	.70
Short-period basic rate, $10 hour; if 1 hour is taken	.64
Short-period basic rate, $7 hour; if 1 hour is taken	.45
Short-period basic rate, $6 hour; if 1 hour is taken	.38
Short-period basic rate, $5 hour; if 30 minutes are taken	.37
Short-period basic rate, $5 hour; if 1 hour is taken	.32
Short-period basic rate, $4 hour; if 30 minutes are taken	.30
Half talking service (first 100 miles)	.27
Short-period basic rate, $4 hour; if 1 hour is taken	.26
Short-period basic rate, $3 hour; if 30 minutes are taken	.22
Short-period basic rate, $3 hour; if 1 hour is taken	.19
Day full talking service (365 days)	.18
Public news telephone (365 days); if 5 hours are taken	.18
Short-period basic rate, $2 hour; if 30 minutes are taken	.15
Short-period basic rate, $2 hour; if 1 hour is taken	.13
Full talking service, 24 hours daily (365 days)	.08
Night full talking service (365 days)	.07

MORSE; 365 DAYS ARE USED TO THE YEAR; ONE WIRE ONLY.

	Mills.
Day commercial south of Ohio River	0.10
Day press association	.09
Day commercial north of Ohio River	.08
Day newspaper	.08
Night commercial south of Ohio River	.05
Night press association	.05
Night commercial north of Ohio River	.04
Night newspaper	.04

While there is little of record concerning the character of the service given to subscribers for the various talking-service contracts, it is obvious that there is saved to the subscriber the time and trouble incident to obtaining a long-distance connection. It appears, therefore, that the private-wire talking service is more efficient than public toll service, but that the superiority is less marked than in the case of public and private wire Morse service.

Under the terms of section 1 of the act to regulate commerce, as amended June 18, 1910, the provisions of the act apply—

to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning of this act, * * *

And it is further provided that—

All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages.

As stated above, private-wire contracts were in force for many years before the amendment of June 18, 1910, made telegraph and telephone companies engaged in the business described in section 1 of the act subject to the provisions of the act. Had the Congress desired either to recognize the propriety of such contracts, or to forbid them, it could have expressed this intent in appropriate language. This was not done.

We must assume, therefore, that the lawfulness of private-wire service depends upon whether or not private-wire messages are among "such other classes as are just and reasonable" into which the carriers may classify messages transmitted over their wires.

In construing the portion of section 1 quoted above we said in *White* v. *Western Union Telegraph Co.*, 33 I. C. C., 500, 501:

The right of carriers subject to the act to initiate their charges is too well established to need citation of authority. Such charges are prima facie reasonable, except where otherwise provided by law. Congress has here provided that messages may be classified into "day, * * * press, * * * and such other classes as are just and reasonable," and that different rates may be charged for the different classes.

It is plain that both classification and charge are to be made in the first instance by the carrier, and it follows by necessary implication that the carrier is to define the classes and formulate such rules and regulations pertaining thereto as shall be just and reasonable. The initiative is with the carrier.

See also *Malone* v. *New York Telephone Co.*, 40 I. C. C., 185, 187.

Some question is raised regarding our jurisdiction on the ground that respondents are subject to the act only in so far as they are engaged in "the transmission of messages," and that in rendering the private-wire service they merely lease facilities, the messages being

transmitted by the lessees. With this refinement we can not agree. It is true that by providing his own operators the private-wire lessee receives a service that differs in some respects from that rendered to the general public. The fallacy of the argument is, however, clearly shown when it is remembered that the service rendered to the private-wire lessee corresponds very closely with that furnished by telephone companies to their subscribers. We do not understand that the jurisdictional point is seriously urged. It seems clear that respondents are common carriers engaged in the transmission of intelligence. Section 1 of the act; *Western Union Tel. Co.* v. *Call Pub. Co.*, 181 U. S., 92, 100; *Ware & Leland* v. *Mobile County*, 209 U. S., 405, 410; *West. Un. Tel. Co.* v. *Crovo*, 220 U. S., 364, 367. It is equally clear that communication by telegraph or telephone between different states, territories, or districts of the United States is interstate commerce. *Pensacola Tel. Co.* v. *West, etc., Tel. Co.*, 96 U. S., 1; *Leloup* v. *Port of Mobile*, 127 U. S., 641, 645; *Ware & Leland* v. *Mobile County, supra; West. Un. Tel. Co.* v. *Milling Co.*, 218 U. S., 406; *West. Un. Tel. Co.* v. *Crovo, supra; Postal Telegraph-Cable Co.* v. *City of Mobile*, 179 Fed., 955, 960; *New England Telegraph Co.* v. *Town of Essex*, 206 Fed., 926; *Louisville & N. R. Co.* v. *Western Union Telegraph Co.*, 207 Fed., 1, 11. And section 1 of the act clearly states that the provisions of the act shall apply to any corporation or person so engaged.

Complainant claims that the private-wire service is a wholesale service, the necessary effect of which is to give lower rates to those having sufficient business to justify the use of private wires. The Western Union and the Postal, as previously stated, call it a surplus product, while the Bell terms it a by-product. The receivers' association, while alleging that the charges are too high to render the service available to any except the largest concerns, claims that such charges are too low and result in undue preference of private-wire lessees and undue prejudice to users of the public wires.

We have frequently stated that the so-called wholesale theory has no proper place in the rates of common carriers. In one of the first cases decided by the Commission, *Providence Coal Co.* v. *Providence & Worcester R. R. Co.*, 1 I. C. C., 107, it considered a rate limited to consignees receiving 30,000 tons or more of coal at one point, this rate being 10 per cent lower than the unrestricted rate. In condemning the rate the Commission said, pp. 117, 118:

> A discrimination such as the offer and its acceptance by one or more dealers would create must have necessary tendency to destroy the business of small dealers. * * * A railroad company has no right, by any discrimination not grounded in reason, to put any single dealer, whether a large dealer or a small dealer, to any such destructive disadvantage.

And in *Harvard Co.* v. *Penn. Co.*, 4 I. C. C., 212, 224, it was said:

> In such a case mere quantity, not measured by a recognized unit of quantity adapted to carriage and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property. The small dealer is entitled to just and reasonable rates on his product, as much so as many and large dealers, and any discrimination between them in rates based upon the idea that one class of persons makes many shipments while the other makes but few is unjust and unreasonable under the provisions of the act to regulate commerce.

In repeated decisions we have held that "the mere fact that certain traffic is hauled in trainload lots can not be made the basis of rates different from those applied to shipments in single carloads." *Woodward-Bennett Co.* v. *S. P., L. A. & S. L. R. R. Co.*, 29 I. C. C., 664, 665, and cases cited.

The principles set forth in the foregoing cases have been consistently followed. The apparent exception in establishing lower rates on most commodities for carload than for less-than-carload shipments is not really an exception, the difference being based not on the quantity shipped but on the difference in the service performed and the general recognition of the carload as unit of shipment. *Thurber* v. *N. Y. C. & H. R. R. Co.*, 3 I. C. C., 473, 502, 510; *Int. Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S., 235, 240. It is unnecessary to discuss rates for circus trains or per-car rates on cattle.

In so far as respondents' charges for private-wire service may be based upon the wholesale theory we have no difficulty in finding that the classification is not just and reasonable While the private-wire service may in a sense be a surplus or by-product service, the rates for the transmission of messages by common carriers can not properly be based upon the theory that one class of service carries the burden of expense and that revenue derived from another class is practically net revenue. This theory, carried to its logical conclusion, would permit a railroad to charge the first passengers, up to a given number, entering a car a fare sufficiently high to cover expenses and yield a profit, and charge passengers over this number a lower fare on the principle that they were receiving surplus transportation.

In determining whether or not private-wire messages are among "such other classes as are just and reasonable," we must consider the question from the standpoint of the whole country for—

> The outlook of the Commission * * * must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided. *Interstate Comm. Comm.* v. *Chi., R. I. & Pac. Ry.*, 218 U. S., 88, 103.

The Postal asserts on brief, "When a broker leases a wire and sends over it the telegraph business of a number of brokers, he is carrying on a public telegraph business and, in fact, is a small telegraph company in himself, doing business at a reduced rate, and discriminating in favor of some members of the public (i. e., his conspirator brokers) as against other members of the public." In *Ware & Leland* v. *Mobile County*, *supra*, which concerned contracts for sales of cotton for future delivery, in connection with which the appellants used a private telegraph line, the Supreme Court said, p. 412:

> The appellants are brokers who take orders and transmit them to other states for the purchase and sale of grain or cotton upon speculation. They are, in no just sense, common carriers of messages, as are the telegraph companies.

Clearly the fact that in Morse service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires. If this were so the same reasoning would support the conclusion that telephone companies are never common carriers despite the express provision of the act. In reaching our conclusions we are not unmindful of the different liability assumed by the companies when messages are sent through the medium of their operators.

This is a practical question and should have a practical solution. In effect we are asked to abolish the private-wire service. But in our opinion it must stand or fall according to whether or not under a just and reasonable classification it may be recognized as a separate class of service, having distinctive features of its own. While the abolition of this service might be the easiest way to meet the difficulties encountered in its regulation, we do not understand that the act confers upon us arbitrary power in regard to the classification of messages by the carriers, but that we must consider such classification in connection with the myriad details incident to any complicated rate problem. As was said in *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S., 236, 248, "the natural evolutions of a complex society are to be touched with a very cautious hand, and such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain."

Everyone is familiar with the marvelous development of means of transportation and communication during the last and present century. We may not assume that we are no longer in a period of transition or attempt to govern conditions, perhaps as yet unforeseen, by hard-and-fast rules which might impede the natural development of the country.

Regulation of the interstate commerce of many common carriers of different types has been confided to us. Pipe lines, telegraph, telephone, and cable companies, whether wire or wireless; railroads; and, under certain conditions, water carriers, are subject to the provisions of the act. Manifestly the operation of these agencies of commerce should be regulated in a broad spirit with a view to the welfare of the entire country and not in such a way as to stifle progress. The necessities and limitations of the various means of transportation or communication must be recognized; and the greatest care must be exercised in applying to one kind of carrier by analogy rules found necessary in connection with a different kind of carrier. This thought is expressed in the following excerpt from *United States Tel. Co.* v. *Central Union Tel. Co.*, 171 Fed., 130, 143:

> When it is said that a long-distance telephone company has no right to compel a connection with a local telephone exchange belonging to another company (which, of course, must be done, if at all, on reasonable and fair terms to the local company), for the same reason that one railroad company can not be permitted to run its engines and cars loaded with its freight on the lines of another railroad company, no account is taken of the fact that the law as applied to railroad companies is a law arising out of convenience and necessity; for it would be physically impossible and unsafe for one railroad company to be permitted to run its cars and engines, except with the consent of the other company, over another company's lines. This is an obvious fact.
>
> But in the reasoning whereby an analogy is sought to be shown between connecting telephone lines and connecting railroad lines in the respects referred to, no account is taken of the fact that originally, when railroads were first instituted, the theory upon which they were given the right of eminent domain was that the line of railroad was in truth and in fact in every respect a legal highway, and that in the primary conception of railroads it was intended that they should be used as highways—that any person might go upon them with his own locomotive and cars and operate them under reasonable restrictions. In the stupendous development of the physical facts of railroading, this theoretical and basic idea, that the railroad was a public highway in the large sense which I have described, disappeared.

It appears that among patrons of telegraph and telephone service the dissatisfaction with the private-wire service, so far as shown by the record, is practically confined to the receivers' association. Moreover, the complaint of its members is not so much against private wires in general as against private wires of brokers competing with them in the grain business.

They seek the "abolition of this practice of leasing wires" or the fixing of rates "to conform to other service, and that will make the rental so high that the practice will disappear." Their contention is that the rates for private-wire service are so low that those availing themselves of it secure an undue preference; and that the total cost is so high that only those with a large business can secure the benefit of the low rate.

In effect we are asked either to abolish the service or to prescribe higher rates for it. We have often stated that we have no power to prescribe a minimum rate. *Kansas City Transportation Bureau* v. *A. T. & S. F. Ry.*, 15 I. C. C., 491, 497; *Merchants Cotton Press & Storage Co.* v. *I. C. R. R. Co.*, 17 I. C. C., 98, 102; *Fresh Meats and Packing-House Products*, 23 I. C. C., 652, 655; *Boileau* v. *P. & L. E. R. R. Co.*, 24 I. C. C. 129, 133; *Galloway Coal Co.* v. *A. G. S. R. R. Co.*, 40 I. C. C., 311, 315.

In disposing of the questions presented we will consider first the Morse service and second the talking service.

It is well settled that what is undue or unreasonable preference or advantage is a question of fact. *Texas & Pac. Railway* v. *Inter-State Com. Com.*, 162 U. S., 197, 219; *Int. Com. Com.* v. *Alabama Midland Ry.*, 168 U. S., 144, 170; *Western Union Tel. Co.* v. *Call Pub. Co.*, *supra; Int. Comm. Comm.* v. *Del., L. & W. R. R.*, *supra; United States* v. *Louis. & Nash. R. R.*, 235 U. S., 314; *Pennsylvania Co.* v. *United States*, 236 U. S., 351, 361.

Upon a sufficient showing we can enter an order requiring the removal of unjust discrimination or undue preference. Such an order is in the alternative and in the case of rates may be complied with by reducing the higher to the level of the lower, by increasing the lower to the level of the higher, or by placing both upon some other common level. Here, however, the receivers' association seeks to have the private-wire charges increased.

The record justifies the conclusion that respondents furnish private-wire service to all applicants therefor, at least to the capacity of their spare facilities, without discrimination and in the order of the applications. It seems clear that the members of the receivers association might, if they saw fit, apply for and secure this service on the same terms as others. In *White* v. *Western Union Telegraph Co.*, *supra*, we said, p. 502:

> All cable rates above mentioned, other than those for press service, are open to the public. Complainants may avail themselves of the lower rates, and there is nothing of record to show how they are subjected to unjust discrimination when they elect to use the standard service.

It is alleged that this is a wholesale service. But, as regards the Morse service, the record does not support this assertion. The rate is based on mileage, not on volume of business, and there appears to be no minimum-mileage restriction. Mention is made of a private wire only 2 miles long used by Swift & Company.

The character of the Morse service rendered by respondents in connection with the private wires differs from that furnished over the public wires. This is summarized as follows by the Bell company:

The telegraph company undertakes to collect the telegrams either over the local telephone or by messenger, collects the charge for transmission either from the sender or the addressee, or, in lieu thereof, makes a record through its bookkeeping department, handles the telegram over its counter through its recording clerks, passing the same to its operators by means of messengers, transmits the telegram over the wire to the distant point, sometimes after several relays, and there, after making a copy of the telegram and making the proper entries upon its books, delivers the telegram by messenger to the person addressed. The very telegram itself, instead of containing only the words of the message desired to be conveyed to the addressee, usually has eighteen to twenty additional words or characters identifying the sender, his address, the date of sending, the addressee, his address, the time of sending, the time of receiving, the operator sending, the operator receiving, the number of the telegram according to the files of the sending office and the same of the receiving office, the sending marks of the operator at either end, the check of the number of words, information as to whether or not the charge for the telegram has been paid or is to be collected from the addressee, and other necessary information to complete the records of the company. In addition to all of this the telegraph company maintains its own offices, pays for its own light, heat, counter clerks, cashiers, managers, stationery, messengers, and other overhead expense, and assumes under the law full legal responsibility for all errors or delays in transmission. In the case of the leased-wire service the telegraph company does nothing except furnish the wire, telegraph instruments, and electric current. The user furnishes everything else and assumes full legal responsibility for any errors made, as well as all expenses of operation.

In *Texas & Pac. Railway* v. *Interstate Com. Com.*, *supra*, the Supreme Court said (p. 219):

Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress.

Upon the facts of record we are of opinion and conclude that the so-called Morse private-wire service furnished by respondents differs in many essentials from other classes of service and, stripped of certain abuses, may properly be placed among "such other classes as are just and reasonable" into which respondents are authorized by the act to classify messages transmitted by them.

On the question of discrimination the case of *Penn Refining Co.* v. *West. N. Y. & P. R. R. Co.*, 208 U. S., 208, is instructive. That case dealt with certain questions arising from proceedings before this Commission in which, among other things, "The Commission ordered the defendants to cease and desist from charging or collecting any rate or sum for the transportation of the barrel package on shipments of oil in barrels over their respective roads." In disposing of the case the court said (p. 221):

We are unable to concur in this view. Because circumstances existed which prevented the economical use of the tank car by plaintiffs (no demand being made for the use of a tank car) is no ground for finding discrimination in the charge for the weight of the barrel package (such charge being in itself not

an unreasonable one), while none is made for the tank containing the oil. It might be different if plaintiffs desired tank cars and defendants failed to furnish them on demand.

We are of opinion and conclude that the Morse private-wire service is not shown to be unjustly discriminatory or unduly prejudicial to users of respondents' public telegraph service.

The abuses to which we have referred seem chiefly to be, first, the restoration of private wires after interruption before the needs of the general public are adequately cared for, and, second, the sending of what are known as "contraband" messages.

With regard to the first, we recognize the fact that we have "no control whatever" over the operation or physical maintenance of carriers subject to the act. *The New England Investigation*, 27 I. C. C., 560, 616. But respondents' services, other than those specified in the act, can be recognized as a legitimate exercise of the power to classify only where they are just and reasonable. We are not to be understood as considering just and reasonable any classification which operates to restrict to a few persons equipment necessary for the efficient service of the public. In this connection it is proper to state that the provisions in the contract of one respondent that in time of interruption to the private wires, the public wires can be used at half the regular rates is unduly preferential and must be eliminated.

The second point raises a problem in which the practical and legal questions presented are complicated in the extreme. In the last analysis the status of "contraband" messages can be determined only in a court of competent jurisdiction. Yet the question is squarely presented to us and it seems only fair to the parties to dispose of it in so far as we can.

The analogy between the private-wire lessees and forwarders of freight has been urged upon us. In what is known as the *Forwarders Case*, *Int. Comm. Comm.* v. *Del. L. & W. R. R.*, *supra*, the Supreme Court sustained our holding that mere ownership of goods tendered for transportation can not be made a test of the duty to carry or a basis for fixing charges; and that under the act to regulate commerce a carrier can not refuse to transport carload lots at carload rates because the goods do not actually belong to one shipper or are shipped by a forwarding agency for account of others. This principle is obviously sound, but, as stated above, great care should be taken in applying rules for the regulation of railroads to that of telegraph companies. In forwarding a carload of freight the property is delivered to the carrier in one lot; the property passes into its possession; the quantity is definitely known and is paid for on the basis of quantity, subject to an established minimum weight; and the right to ship an aggregated lot of shipments as a carload lot is restricted

by the established rules governing mixed carload shipments. In the case of private-wire service the messages are sent at various times; no property passes into the hands of the telegraph company; the quantity can be known to the carrier only after the messages have been transmitted and then only by censoring the messages; the messages have no tangible value; and usually their value would be known only to the sender and recipient.

In the case of private-wire service it seems entirely proper and, from a practical standpoint, necessary in the interest of the public to apply some reasonable restrictions to the service. To concede the analogy of the *Forwarders Case* to the private-wire service would overlook the fact that the application of the doctrine to the latter service would more nearly resemble renting at fixed rates to certain persons freight cars in which they might transport for themselves and others whatever articles they desired, unknown to the carriers and regardless of the charges on such articles when shipped by others. Moreover, the holding in the *Forwarders Case* rests directly on the inhibition of section 2 of the act against charging one person more than another for doing "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." 220 U. S., 235, at p. 253. Section 2 is by its terms restricted to "the transportation of passengers or property."

We are of opinion and conclude that respondents are justified in inserting in the contract for private-wire service a provision restricting the use of the instruments and facilities provided to the transmission of messages concerning the business of the lessee or lessees and providing that messages shall not be transmitted for other persons or firms. As shown above such provisions are now embodied in respondents' contracts, but it is said that they are not enforced. While section 6 of the act does not require telegraph and telephone companies to publish and file their charges for interstate transmission of messages, other sections require that such charges shall be just and reasonable, and neither unduly preferential nor unduly prejudicial. The nonenforcement or discriminatory enforcement of any rule affecting the service may well result in violations of these provisions of the act. *Phillips* v. *Grand Trunk Ry.*, 236 U. S., 662. So long as a provision remains a part of the contract it should be enforced. This is not to say that we consider it unlawful for two or more persons to unite in securing private-wire service. But where this is done all should be named as lessees.

While recognizing the propriety of the so-called Morse private-wire service as a separate class of service available to the public upon reasonable compensation, it is not to be inferred that we ap-

prove the existing relation between the charges for such service and those for messages sent through respondents' commercial offices. Whatever may be the defects in the examples set forth earlier in this report they obviously warrant the conclusion that respondents are furnishing the more valuable service at a relatively lower charge contrary to recognized principles of classification.

In *Western Union Tel. Co.* v. *Call Pub. Co.*, *supra*, the court said, p. 100:

> As a consequence of this, all individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast-iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and even when based upon difference of service, must have some reasonable relation to the amount of difference, and can not be so great as to produce an unjust discrimination.

The Postal on brief says:

> We do not hesitate to say that the present leased-wire rate is unreasonably low, as compared with the public-telegraph rate. There can be no doubt that the amount of telegraph business which can be sent over a leased wire during the day would cost very much more if sent at the public rate.

As pointed out, however, it is beyond our power to require respondents to increase their charges for private-wire service. And even did such power exist, we can not assume that these charges should be raised rather than that those for the sending of day messages should be reduced. The charges for messages other than by private wires are not in issue.

Few complaints concerning the rates and service of the three respondents have been filed with us, and consequently this field of regulation has been little touched. Moreover, we appreciate the fact that the Bell company proper furnishes directly no other form of telegraphic communication to the public; that it is not responsible for the commercial rates of its competitors; and that the relation, if any, between rates for telegraphic and telephonic communication may be difficult to establish. The Bell company in fixing its rates assumed a certain relation between the telephone and telegraph service to exist based upon the number of wires in the circuit.

We are convinced of respondents' desire to have their rates just and reasonable in themselves and properly related with respect to the various services performed. They should consider whether or not their rates for Morse private-wire service should be revised.

Passing now to the private-wire talking service furnished by the Bell company, we are unable to perceive any essential differences between this and the toll service rendered the general public by that

company. It is true that such service is rendered at stated times and for longer periods than is usual with toll messages, but this seems merely an application of the wholesale theory which we have so often condemned.

The Bell company on brief concedes that the cases of *Hayes* v. *Pennsylvania Co.*, 12 Fed., 309, and *United States* v. *Tozer*, 39 Fed., 369, which "hold that quantity alone offers no basis for a difference in classification," are "undoubtedly good law."

Upon the record we are of opinion and find that the classification in this respondent's private-wire talking service of messages by telephone is not a just and reasonable classification, and that in maintaining this talking service the Bell company unduly prefers messages sent by private wire and the lessees of such wires and subjects to undue prejudice messages sent at the toll rates and the senders thereof.

By virtue of the President's proclamation dated July 22, 1918, all telegraph and telephone systems within the jurisdiction of the United States are now under federal control. The authority primarily to determine and initiate the character of services to be furnished by these systems, and the concomitant classification and charges, no longer rests with the private interests which are respondents in this proceeding, and the entry of an order would serve no useful purpose. Nevertheless, since this statement of facts so far as they have been developed and the incidental discussion may be beneficial in the form of a public report, we have deemed it expedient to promulgate this report.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

6077. FARRELL *v.* C., M. & ST. P. RY. CO. ET AL. Rate on potatoes from Britton, S. D., to Drexel, Mo., via the C., M. & St. P. Ry. and K. C. S. Ry. *P. W. Dougherty, D. L. Kelley*, and *J. J. Murphy* for complainant. *O. W. Dynes* and *J. G. Love* for defendants. Dismissed for want of prosecution, June 14, 1918.

8880. SKIPWORTH & CO. ET AL. *v.* S. RY. CO. ET AL. Rates on cotton from points in Georgia on the line of the Augusta Southern Railroad Co. to Augusta, Ga., and reforwarded to Rockwell, N. C. *W. S. Creighton* for complainants. *L. Green* and *C. B. Northrop* for defendants. Dismissed on request of complainants, July 22, 1918.

9020. MULTIPLE CAR LOT RATES. Order of Commission requiring carriers to show cause why an order should not be entered requiring them to cease and desist from maintaining tariffs providing for rates applicable only on multiple car lots or on certain quantities in excess of a single car lot. All objectionable multiple car lot rates having been canceled, proceeding discontinued, July 6, 1918.

9286. CALIFORNIA WHOLESALE POTATO DEALERS ASSO. *v.* S. P. CO. Delay in providing the necessary equipment and distribution of Pacific Fruit Express cars, for the movement of potato and onion crops from points in Oregon, Nevada, and California, to interstate markets. *Percy Small* for complainant. *F. H. Wood, C. W. Durbrow, G. D. Squires*, and *F. B. Austin* for defendant. Dismissed on request of complainant, July 15, 1918.

9304. BIG HORN COLLIERIES CO. *v.* C., B. & Q. R. R. CO. ET AL. Rates on coal from Crosby, Wyo., to points in Nebraska, Iowa, and South Dakota. *A. L. Vogl* for complainant. *J. F. Vallery* for defendants. Dismissed on request of complainant, May 22, 1918.

9680. BAYWAY CHEMICAL CO. ET AL. *v.* C. R. R. CO. OF N. J. ET AL. Rates on shipments of a commodity described as "products of the distillation, at high temperature in the carbureting portion of the water gas process, of gas oil," the latter being a petroleum product. *E. L. Dimick* for complainants. *A. H. Elder, W. H. Oakes*, and *R. N. Collyer* for defendants. Dismissed on request of complainants, July 15, 1918.

9772 and Subs. 1, 2, and 3. MARTIN *v.* N. Y., N. H. & H. R. R. CO. Demurrage charges or so-called heater storage charges, in addition to the regular car demurrage charges at Harlem River local station. *A. W. Rinke* and *H. L. Davis* for complainant. *C. M. Sheafe, jr.*, for defendant. Dismissed on request of complainants, June 11, 1918.

9893. HENNESSY CO. *v.* B., A. & P. RY. CO. ET AL. Rates on sugar from San Francisco, Oakland, Crockett, and Potrero, Cal., to Butte, Mont. *O. W. Tong* for complainant. *O. W. Dynes, S. H. E. Freund, H. A. Scandrett, G. H. Smith, J. O. Moran, C. W. Bunn, D. F. Lyons, F. H. Wood, C. W. Durbrow, G. D. Squires, F. B. Austin*, and *M. S. Dean* for defendants. Dismissed on request of complainant, July 15, 1918.

9951. PACIFIC COAST STEEL CO. *v.* G. N. RY. CO. ET AL. Rates on scrap iron and steel from Chicago, Ill., Milwaukee, Wis., and St. Paul and Duluth, Minn., and points west thereof, to Seattle, Wash. *S. J. Wettrick* for complainant. *F. V. Brown, L. B. DuPonte, S. J. Henry*, and *O. P. Kellogg* for defendants. Dismissed on request of complainant, June 11, 1918.

9999. SAVAGE TIRE CO. *v.* ERIE R. R. CO. ET AL. Class rates on nickel-plated brass valves and parts thereof, from New York, N. Y., to San Diego, Cal. *O. T.*

Helpling and *P. H. Campbell* for complainant. *E. W. Camp* and *G. H. Baker* for defendants. Dismissed on request of complainant, June 11, 1918.

10068. NASHVILLE TRAFFIC BUREAU *v.* C. & E. I. R. R. CO. ET AL. Rates on grapes from various points in Michigan to Nashville, Tenn. *T. M. Henderson* for complainant. *A. C. Tumy, W. A. Colston, W. A. Northcutt, Glennon, Cary & Walker, J. C. Bills, K. L. Richmond,* and *M. S. Connelly* for defendants. Complaint satisfied. Dismissed July 22, 1918.

10098. WATER COMPETITIVE LUMBER RATES. Applications for authority to cancel water competitive rates on lumber and lumber products from Norfolk and various other points in the southeastern States to eastern and New England points, and to make applicable in lieu thereof the so-called "normal lumber rates" on forest products. Applications withdrawn. Proceeding discontinued, July 15, 1918.

10145. SOUTHEASTERN LUMBER RATES. Applications for authority to make readjustment of the rates on lumber and articles grouped therewith from points of origin in Florida, Georgia, Alabama, Mississippi, Louisiana, on and east of the Mississippi River, Tennessee, Kentucky, southwest Virginia and a few points in North Carolina, to eastern port cities, Virginia cities, and interior basing points. Applications withdrawn. Proceeding discontinued, July 22, 1918.

10202. HILLSBORO COAL CO. *v.* C., C., C. & ST. L. RY. CO. ET AL. Furnishing of coal cars in times of car shortage to mine of complainant, located near Hillsboro, Ill., adjacent to line of railroad between Pana and Mitchell, Ill. *C. B. Cardy* for complainant. Complaint satisfied. Dismissed July 22, 1918.

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REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

5866. Lindsay-Walker Co. *v.* S. P. Co., June 11, 1918. Reparation for $1,264.75, on shipments of deciduous fruit from California points to Billings, Mont., and Sheridan, Wyo., on account of illegal and unreasonable charges.

6561 and 6561 (Sub-Nos. 1, 2, 3, 5, 6, and 8). McCaull-Dinsmore Co. *v.* M., P. Ry. Co. June 11, 1918. Reparation for $1,035.86, on shipments of corn and oats from Iowa points to Leavenworth and Atchison, Kans., and Kansas City and St. Joseph, Mo., on account of unreasonable rates.

7417. Okla. Traff. Asso. *v.* A., T. & S. F. Ry. Co. June 11, 1918. Reparation for $1,310.82, on shipments of soda ash and caustic soda from various points to Oklahoma City, Okla., on account of unreasonable rates.

8720. Graves Bros. Co. *v.* A. N. R. R. Co. June 11, 1918. Reparation for $175.13, on shipments of lumber from Hosford, Fla., to Pensacola, Fla., for export, on account of unreasonable rate.

9370. Schafer & Son *v.* L. I. R. R. Co. June 11, 1918. Reparation for $1,125, on account of unlawful demurrage charges collected on certain cars of hay held at Long Island City, N. Y., for reconsignment.

8533. Cudahy Packing Co. *v.* A., T. & S. F. Ry. Co. July 15, 1918. Reparation for $295.24, on account of unreasonable reicing charges at Fort Madison, Iowa, on packing-house products shipped from Wichita, Kans., to points east of Indiana-Illinois state line.

8953. Stewart Iron Co. *v.* P. Co. July 15, 1918. Reparation for $8,280.05, on account of damage due to the defendants' refusal to compensate complainant for the expense of spotting cars moving interstate to or from its plant at Sharon, Pa.

9210 and 9210 (Sub-Nos. 1 and 2). Natl. League of Commission Merchants *v.* P. R. R. Co.; Carroll *v.* P. R. R. Co.; and Same *v.* Same. July 15, 1918. Reparation for $5,907.82, on account of damage due to drayage charges on certain shipments of fruits and vegetables destined to New York, N. Y., because of defendant's inability to make proper delivery.

6797. Standard Roofing Co. *v.* M., K. & T. Ry. Co. July 22, 1918. Reparation for $990.39, on shipments of prepared roofing and building paper from East St. Louis, Ill., and St. Louis and Kansas City, Mo., to Oklahoma points, on account of unreasonable rates.

7547. Kundtz Co. *v.* St. L. & S. F. R. R. Co. July 22, 1918. Reparation for $1,586.60, on shipments of logs from Chaffee, Mo., to Cleveland, Ohio, on account of unreasonable rates.

8672. Traff. Bureau of Nashville *v.* L. & N. R. R. Co. July 22, 1918. Reparation for $14,176.14, to various complainants on shipments of coal from mines on defendant's lines in western Kentucky, on account of unreasonable rate.

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Delaware & Raritan Canal destinations from Lehigh region, Pa. Anthracite coal, 543.
Delaware to Shenandoah, Pa. Mine props, 327.
Delaware River destinations from Lehigh region, Pa. Anthracite coal, 543.
Denver, Colo., from Brooklyn, N. Y. Spanish cedar cigar-box lumber, 465.
Denver, Colo., to Cleveland and Lorain, Ohio. Crude naphthalene, 286.
Des Plaines, Ill., from Laurel, Miss. Lumber, 453.
Detroit, Mich., from Lawrenceville, Ill. Petroleum and its products, 249.
Dow, Ill., to Sedalia, Mo. Common building brick, 449.
Duluth, Minn., to and from New York, N. Y., and other points in eastern trunk line territory. Divisions, 157.
Duluth, Minn., to Sioux Falls, S. Dak. Anthracite and bituminous coal, and coke, 610.
Durant, Okla., from Estancia, Willard, and Mountainair, N. Mex. Dried beans, 263.
Durbin, W. Va., from Fort Worth, Tex. Green salted hides, 597.
Durham, N. C., to central freight association territory. Tobacco, 120.
Dyersburg, Tenn., from Illinois, Iowa, Kentucky, and Tennessee, milled and forwarded to Texas, Alabama, and Mississippi. Corn, 573.
East Canaan, Conn., from Pennsylvania. Charcoal, storage charges, 262.
East Grand Forks, Minn., from La Crosse, Wis. Beer, 273 (274).
East Grand Forks, Minn., to La Crosse, Wis. Empty beer packages, 273.
East Moline, Ill., from Nashville, Tenn. Binder and canvas slats, 367.
East Point, Ga., from Elizabethton, Tenn. Maple lumber and maple flooring, 137 (138).
East St. Louis, Ill., to Tampa and other Florida points, via Louisville, Ky., or Cincinnati, Ohio. Grain and grain products, 148.
Eastern defined territory from California. Canned goods, 62.
Eastern port cities from various points, moving through Petersburg and Richmond, Va., and Hagerstown, Md. Cancellation of routes on lumber, 191.
Eastern trunk line territory to and from Minneapolis and St. Paul, or Duluth, Minn. Divisions, 157.
Eastern trunk line territory from Peoria and Pekin, Ill. Grain and grain products, 187.
Eastern trunk line territory from Toledo, Ohio. Ex-lake grain and grain products, 515.
Ecru, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
El Paso, Tex., from Batesville, Ark. Excelsior, 235.

El Paso, Tex., from St. Louis, Mo. Finished metal molding, 607.
Elizabethton, Tenn., to Georgia, Florida, and South Carolina. Maple lumber and maple flooring, 137.
Elko, Nev., to Oakland and San Francisco, Cal. Sheep, 425.
Epley, Miss., to Hazelton, Pa. Yellow-pine lumber, 481.
Epley, Miss., to Lattimer Mines, Pa. Yellow-pine lumber, 481.
Erie, Kans., to Salt Lake City, Utah. Petroleum products, 90.
Estancia, N. Mex., to Muskogee and Durant, Okla. Dried beans, 263.
Etoile, Tex., to New Orleans, La. Staves and forest products, 280.
Eugene, Oreg., from Kansas City, Mo. Condensed smoke, 225.
Evans Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Evansville, Ind., from Malone, Fla., reconsigned to Rockford, Ill. Lumber, 133.
Everett, Wash., from Kansas City, Mo. Condensed smoke, 225.
Ewing, Tex., to New Orleans, La. Staves and forest products, 280.
Faithorn yard, Ill. (Chicago). Demurrage, yellow-pine lumber, 369.
Falls City, Oreg., from Portland, Oreg. Relaying steel rails and fastenings, 223.
Fall River, Mass., to and from Providence, R. I. Passenger fares, 486.
Fayville, Ill., to Ishpeming, Mich. Sulphuric acid, 106.
Ferris, Tex., from Cincinnati, Hamilton, and Lockland, Ohio. Second hand rails and angle bars, 95.
Finneys Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Florence, S. C. Cancellation of route through, on lumber from other points, 191.
Florida from Elizabethton, Tenn. Maple lumber and maple flooring, 137.
Florida from East St. Louis, Ill., via Louisville, Ky., or Cincinnati, Ohio. Grain and grain products, 148.
Folsom, Cal., from Kansas City, Mo. Condensed smoke, 225.
Fort Edward, N. Y., to North Tonawanda, N. Y., via Sayre, Pa. Wrapping paper, 75.
Fort Plain, N. Y., from Hickory, N. C., reconsigned to South Fort Plain, N. Y. Lumber, 434.
Fort Smith, Ark., from Memphis, Tenn. Green salted hides, 247.
Fort Worth, Tex., to Durbin and Marlington, W. Va. Green salted hides, 597.
Franklin, N. J., from Allen, S. C. Yellow-pine lumber, 77.
Freeport, Tex., to Hattiesburg and Meridian, Miss. Sulphur, 379.
Fremont, N. C., to Norfolk, Va. Cotton linters, 227.
Furman, S. C., to Savannah, Ga. Logs, 81.
Garyville, La., to Storm Lake, Iowa. Cypress lumber, 198.
Georgia from Elizabethton and Roan Mountain, Tenn. Maple lumber and maple flooring, 137.
Georgia from Mt. Pleasant, Tenn. Fertilizer, 253.
Gershorm, Miss., from Mt. Pleasant, Tenn. Fertilizer, 253 (257).
Gibbstown, N. J., from Coatesville, Pa. Coal ashes and cinders, 203.
Glenwood, Minn., from La Crosse, Wis. Beer, 273 (274).
Glenwood, Minn., to La Crosse, Wis. Empty beer packages, 273.
Globe, Ariz., from San Antonio, Tex. Delaware punch sirup, 29.
Grand Forks, N. Dak., to Spiro, Okla. Potatoes, 135.
Grand Island, Nebr., to Montgomery, Ala. Horses and mules, 73.
Grand Rapids, Mich. Trap-car services, furniture, 555.
Grand Valley, Colo., from Spokane, Wash. Box shooks, 332.
Grants Pass, Oreg., from Kansas City, Mo. Condensed smoke, 225.
Gravel Pit, Idaho, to Alamosa, Colo. Cedar posts, 332.

Great Falls, Mont., from Cowley and Greybull, Wyo. Heavy petroleum oils, 357.
Green Bay, Wis., from Asbury Park, N. J. Pants, 237.
Greenville, Tenn., to Webster, N. Y., diverted to Wellsville, N. Y. Lumber, 405.
Greenville, Tex., from Milwaukee, Wis. Street-washing machines, 314.
Gretna, La., from Okmulgee, Okla., reconsigned to Amesville, La., reshipped to Westwego and New Orleans, La., for export. Petroleum tailings, 270.
Greybull, Wyo., to Great Falls, Mont. Heavy petroleum oils, 357.
Gulfport, Miss., from Pensacola, Fla. Pyrites ore, 432.
Gulf ports from California. Canned goods, 62 (63).
Hagerstown, Md. Cancellation of route through, on lumber destined to eastern port cities and interior eastern territory, 191.
Hamilton, Ohio, to Ferris, Tex. Second-hand rails and angle bars, 95.
Hanford, Cal., from Kansas City, Mo. Condensed smoke, 225.
Harbortón, Va., to central freight association, trunk line, New England, Canadian, and western trunk line territories. Vegetables, 436.
Harborton Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Harrison, Idaho, to Beach, N. Dak., and Minneapolis, Minn., and other points in North Dakota, Minnesota, and Montana. Pine and fir lumber, 591.
Hattiesburg, Miss., from Sulphur Mines, La., and Bryan Mound and Freeport, Tex. Sulphur, 379.
Hazard, Pa., from Cartersville, Ga. Crude barytes, 429.
Hazleton, Pa., from Epley, Miss. Yellow pine lumber, 481.
Helper, Utah, from Ione, Wash. Cedar posts, 332.
Heucks, Miss., from Mt. Pleasant, Tenn. Fertilizer 253 (254).
Hickory, N. C., to Fort Plain, N. Y., reconsigned to South Fort Plain, N. Y. Lumber, 434.
Hogansville, Ga., from Elizabethton, Tenn. Maple flooring, 137 (139).
Hotchkiss, Colo., from Spokane, Wash. Box shooks, 332.
Huntington, W. Va., to Birmingham, Ala. Iron and steel rails, 318.
Huntington, W. Va., to Cleveland, Ohio. Steel rails, 69.
Huntington, W. Va., to New York, N. Y., Philadelphia, Pa., and Baltimore, Md. Light steel rails, 110.
Huntington, W. Va., from Sparrows Point, Md. Iron and steel rails, 304.
Idaho to and from Canada. Heated-car service, 620.
Illinois to central freight association and trunk line territories. Terra cotta, 522.
Illinois from Chicago, Ill. Packing-house products, and other commodities, 211.
Illinois to interstate destinations. Minimum weights on flour, 170 (174).
Illinois to Las Cruces, N. Mex. Wheat, 483.
Illinois to Texas, Alabama, and Mississippi, milled at Dyersburg, Tenn. Corn, 573.
Illinois classification territory from Milwaukee, Wis. Iron dampers and damper closers, 361.
Illinois coal fields to Muscatine, Iowa. Coal, 469.
Independence, Kans., to Salt Lake City, and Provo, Utah. Petroleum products, 90.
Indiana from Allison Branch, Ill. Sand and gravel, 596.
Indiana to central freight association and trunk line territories. Terra cotta, 522.
Indiana from Chicago, Ill. Packing-house products and other commodities, 211.
Indiana to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Indiana from Sulligent, Ala. Gum lumber, 22.
Indiana-Illinois state line, points east of, from Sedalia, Mo. Dressed poultry, butter, and eggs, 479.

Indianapolis, Ind., to Chicago, Ill., originating at Bogalusa, La. Lumber and paving blocks, 201.
Ingomar, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
Interior eastern territory from various points, moving through Petersburg and Richmond, Va., and Hagerstown, Md. Cancellation of routes on lumber, 191.
Intermountain territory from California producing points. Walnuts and almonds, 558.
Ione, Wash., to Helper, Utah. Cedar posts, 332.
Iowa from Chicago, Peoria and St. Louis rate groups. Potatoes, 407.
Iowa to interstate destinations. Minimum weights on flour, 170.
Iowa from Michigan. Apples, 324.
Iowa to Texas, Alabama, and Mississippi, milled at Dyersburg, Tenn. Corn, 573.
Ishpeming, Mich., from Fayville, Ill. Sulphuric acid. 106.
Ivorydale, Ohio, from Boston, Mass., reconsigned to Kansas City, Mo. Coconut oil, 131.
Jackson, Mich., from Lawrenceville, Ill. Petroleum and its products, 249.
Jacksonville, Fla., from Elizabethton, Tenn. Maple lumber and maple flooring, 137 (138).
Jefferson City, Mo., from New Orleans and Port Chalmette, La. Sisal, 13.
Jersey City, N. J. Flour, 217.
Johnson City, Tenn., from Cincinnati, Ohio, via Speers Ferry, Tenn. Class and commodity rates, 605.
Joplin, Mo., from Dardanelle, Ark. Sweet potatoes, 109.
Joplin, Mo., to Salt Lake City, Utah. Petroleum products, 90.
Jungo, Nev., to Oakland and San Francisco, Cal. Sheep, 425.
Kansas to interstate destinations. Minimum weights on flour, 170.
Kansas to Las Cruces, N. Mex. Wheat, 483.
Kansas from Parkersburg, W. Va., and St. Louis, Mo. Nails, oil-well outfits and supplies, 416.
Kansas from Omaha, Nebr. Crackers, cookies, and wafers, 724.
Kansas to Omaha, Nebr. Returned empty cracker cans, 724.
Kansas to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Kansas City, Mo., from Arkansas. Pine and cypress lumber, 118.
Kansas City, Mo., from Boston, Mass., reconsigned at Ivorydale, Ohio. Coconut oil, 131.
Kansas City, Mo., to Montgomery, Ala. Horses and mules, 73.
Kansas City, Mo., from New Orleans and Port Chalmette, La. Sisal, 13.
Kansas City, Mo., from Shelbyville, Ind. New furniture, 515.
Kansas City, Mo., to Washington, Oregon, and California. Condensed smoke, 225.
Kentucky from Mount Pleasant, Tenn. Fertilizer, 253.
Kentucky to Ottawa, Ohio. Coal, 87.
Kentucky to Texas, Alabama, and Mississippi, milled at Dyersburg, Tenn. Corn, 573.
Kentucky mines to Charlotte, N. C. Bituminous coal, 1.
La Cerda, Tex., to New Orleans, La. Staves and forest products, 280.
La Crosse, Wis., from Moorehead and Breckenridge, Minn. Empty beer packages, 273.
La Crosse, Wis., to Moorehead and Breckenridge, Minn. Beer, 273.
La Crosse, Wis., from Villa Ridge, Ill. Strawberries, 238.
Lancaster, Wis., from Reno, Pa. Petroleum and its products, 99.
Lansing, Kans., from New Orleans and Port Chalmette, La. Sisal, 13.
Las Cruces, N. Mex., from Colorado, Kansas, Oklahoma, Nebraska, Illinois, Missouri, and northern Texas. Wheat, 483.

Lattimer Mines, Pa., from Epley, Miss. Yellow-pine lumber, 481.
Laurel, Miss., to Des Plaines, Ill. Lumber, 453.
Lawrenceville, Ill., to Detroit, West Detroit, and Jackson, Mich. Petroleum and its products, 249.
Leadville, Colo., from Sand Point, Idaho. Cedar poles, 332.
Leavenworth, Kans., from New Orleans and Port Chalmette, La. Sisal, 13.
Leavenworth, Wash., to Palisade, Colo. Box shooks, 332.
Lehigh region, Pa., to destinations on the Delaware & Raritan Canal and the Delaware River. Anthracite coal, 543.
Lena, S. C., to Savannah, Ga. Logs, 81.
Level Siding, S. Dak., from New Orleans and Port Chalmette, La. Sisal, 13.
Lima, Ohio, to Bogalusa, La. Iron tank, 266.
Lincoln, Nebr., from Arkansas. Pine and cypress lumber, 118.
Lincolnville, Kans., from Rhinehart Spur, La. Yellow-pine lumber, 85.
Lockland, Ohio, to Ferris, Tex. Secondhand rails and angle bars, 95.
Lorain, Ohio. Allowances to industrial railway, 489.
Lorain, Ohio, from Denver, Colo. Crude naphthalene, 286.
Los Angeles, Cal., from San Antonio, Tex. Delaware punch sirup, 29 (31).
Louisiana to interstate destinations. Minimum weight on flour, 170 (174).
Louisiana from Parkersburg, W. Va., and St. Louis, Mo. Nails, oil-well outfits, and supplies, 416.
Louisville, Ky., from East St. Louis, Ill., destined to Tampa and other Florida points. Grain and grain products, 148.
Louisville, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
McCoy, Tex., to New Orleans, La. Staves and forest products, 280.
McDonald, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
McMullin, Mo., to Terre Haute, Ind. Baled straw, 141.
Mahaska, Kans., from Rhinehart Spur, La. Yellow-pine lumber, 85.
Maine from Bellows Falls, Vt. Paper-box board, 341.
Malone, Fla., to Rockford, Ill., reconsigned at Evansville, Ind. Lumber, 133.
Manila, P. I., from Chattanooga, Tenn. Cast iron pipe and fittings, 240.
Manitowoc, Wis., to St. Paul and Minneapolis, Minn. Coal, 575.
Marietta, Ga., from Roan Mountain, Tenn. Maple lumber, 137 (138).
Marion, N. C., from Pardeeville, Wis. Potatoes, 427.
Marlinton, W. Va., from Fort Worth, Tex. Green salted hides, 597.
Marshfield, Mo., to Tulsa, Okla., reconsigned at Springfield, Mo. Apples, 260.
Maryland to Shenandoah, Pa. Mine props, 327.
Marysville, Cal., from Kansas City, Mo. Condensed smoke, 225.
Mason City, Iowa, to official classification territory. Salted hog meats, 47.
Massachusetts from Bellows Falls, Vt. Paper-box board, 341.
Matthews, Mo., to Terre Haute, Ind. Baled straw, 141.
Mayfield, Ky., to New Kensington, Pa., originating at Clearfield, Ky. Oak lumber, 93.
Medford, Oreg., from Kansas City, Mo. Condensed smoke, 225.
Medford, Oreg., from Sultana, Cal. Watermelons, 719.
Memphis, Tenn. Cotton, concentration or compression, 345.
Memphis, Tenn., to Fort Smith, Ark. Green salted hides, 247.
Memphis, Tenn., from Mobile, Ala. Blackstrap molasses, 32.
Meridian, Miss., from Sulphur Mines, La., and Bryan Mound and Freeport, Tex. Sulphur, 379.
Michigan from Akron, Barberton, Midvale, and Parral, Ohio. Sewer pipe, 531.
Michigan to Iowa and Minnesota. Apples, 324.
Michigan from Sulligent, Ala. Gum lumber, 22.

Michigan to various destinations. Potatoes, 407.
Middlesborough, Ky., from Pace Junction, Fla. Yellow-pine lumber, 98.
Midland City, Ala., to Bradley, Ill. Lumber, 423.
Midvale, Ohio, to Wisconsin and Michigan. Sewer pipe, 531.
Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago Ill. Street-washing machines, 314.
Milwaukee, Wis., to western Illinois, Canadian, and official classification territories and Pacific coast points. Iron dampers, damper closers, and thermostats, 361.
Mims, Fla., to Oelwein, Iowa. Grapefruit, 301.
Mineral Point, Wis., from Reno, Pa. Petroleum and its products, 99.
Minneapolis, Minn., from Harrison, Springston, and Rose Lake, Idaho. Pine and fir lumber, 591.
Minneapolis, Minn., from Manitowoc, Wis. Coal, 575.
Minneapolis, Minn., from New Orleans and Port Chalmette, La. Sisal, 13.
Minneapolis, Minn., to and from New York, N. Y., and other eastern trunk line territory points. Division, 157.
Minnesota to Creston, Iowa, and other points. Potatoes, 407.
Minnesota to Dallas, Tex., and other points in Texas common point territory. Potatoes, 528.
Minnesota from Harrison, Springston, and Rose Lake, Idaho. Pine and fir lumber, 591.
Minnesota to interstate destinations. Minimum weights on flour, 170 (174).
Minnesota from La Crosse, Wis. Beer, 273.
Minnesota to La Crosse, Wis. Empty beer packages, 273.
Minnesota from Michigan. Apples, 324.
Minnesota to various destinations. Potatoes, 407.
Minnesota Transfer, Minn., from New Orleans and Port Chalmette, La. Sisal, 13.
Mississippi from Illinois, Iowa, Kentucky, and Tennessee, milled at Dyersburg, Tenn. Corn, 573.
Mississippi from Mount Pleasant, Tenn. Fertilizer, 253.
Mississippi River crossings to Florida. Commodity rates, 148.
Mississippi Valley from Missouri River and Kansas. Minimum weights on flour, 170.
Missouri to central freight association and trunk line territories. Terra cotta, 522.
Missouri to interstate destinations. Minimum weights on flour, 170.
Missouri to Las Cruces, N. Mex. Wheat, 483.
Missouri to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Missouri to Trenton, Mo., reshipped to interstate destinations. Live poultry, 233.
Missouri River to Mississippi Valley. Minimum weights on flour, 170.
Missouri River cities to Toledo, Ohio. Ex-lake grain and grain products, 515.
Mobile, Ala., to Memphis, Tenn. Blackstrap molasses, 32.
Modesto, Cal., from Kansas City, Mo. Condensed smoke, 225.
Mohrland, Utah, from Chewelah, Wash. Cedar poles, 332.
Monson, Cal., to Salem, Corvallis, and Portland, Oreg. Watermelons, 719.
Monson, Me., to Cleveland, Ohio. Slate slabs or panels, 243.
Montana to and from Canada. Heated-car service, 620.
Montana from Harrison, Springston, and Rose Lake, Idaho. Pine and fir lumber, 591.
Montgomery, Ala., from Kansas City, Mo., and Grand Island, Nebr. Horses and mules, 73.
Montrose, Colo., from Colalla Spur, Idaho. Cedar poles, 332.
Moorhead, Minn., from La Crosse, Wis. Beer, 273 (274).
Moorhead, Minn., to La Crosse, Wis. Empty beer packages, 273.
Morleys Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.

Morris, Minn., from La Crosse, Wis. Beer, 273 (274).
Morris, Minn., to La Crosse, Wis. Empty beer packages, 273.
Mound, La., to official classification territory. Hardwood lumber, 540.
Mount Pleasant, Tenn., to Georgia, Alabama, Mississippi, and Kentucky. Fertilizer, 253.
Mountainair, N. Mex., to Durant, Okla. Dried beans, 263.
Murray, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
Muscatine, Iowa, from Illinois coal fields. Coal, 469.
Muskogee, Okla., from Estancia, N. Mex. Dried beans, 263.
Muskogee, Okla., to Salt Lake City, Utah. Petroleum products, 90.
Naclina, Tex., to New Orleans, La. Staves and forest products, 280.
Nadawah, Ala., to Cartersville, Ga. Lumber, 259.
Nandua Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Nashville, Tenn. Delivery at the Union Stock Yards. Horses and mules, 546.
Nashville, Tenn., to Peoria, East Moline, and Chicago, Ill., and St. Louis, Mo. Binder and canvas slats, 367.
Nebraska to Colorado. Grain, 79.
Nebraska to interstate destinations. Minimum weights on flour, 170.
Nebraska to Las Cruces, N. Mex. Wheat, 483.
Nebraska to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Neshoba, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
New Camp, Tex., to New Orleans, La. Staves and forest products, 280.
New England territory from Accomac and Northampton counties, Va. Vegetables, 436.
New England territory from Harborton and Onley, Va. Vegetables, 436.
New Kensington, Pa., from Clearfield, Ky., reconsigned at Maysville, Ky. Oak lumber, 93.
New Orleans, La., from Algiers, La., destined to Richmond, Va. Company materials, 107.
New Orleans, La., to Atlanta, Ga. Coffee, 397.
New Orleans, La., to Kansas, Missouri, Iowa, Minnesota, Wisconsin, South Dakota, and North Dakota. Sisal, 13.
New Orleans, La., from Okmulgee, Okla., reshipped at Amesville, La. Petroleum tailings, 270.
New Orleans, La., to Richmond, Va. Scrap iron rails, 107.
New Orleans, La., from Texas. Staves and forest products, 280.
New Philadelphia, Pa., from Newport News, Va. Mine props, 327.
New York, N. Y. Fresh beef and dressed pigs, 103.
New York, N. Y., from Accomac and Northampton counties, Va. Vegetables, 436.
New York, N. Y., from Andrews, N. C. Lumber, 231.
New York, N. Y., from Brookville, Pa. Clay hollow building blocks, 457.
New York, N. Y., from Huntington, W. Va. Light steel rails, 110.
New York, N. Y., to and from Minneapolis and St. Paul, or Duluth, Minn. Divisions, 157.
New York, N. Y., from Ohio, Indiana, Missouri, Kansas, Nebraska, and Oklahoma, for export, stored in transit at Springfield, Ohio. Wheat, 371.
New York, N. Y., to and from Providence, R. I. Baggage, 625.
New York, N. Y., to St. Louis, Mo. Fennel seed, 376.
New York, N. Y., to San Francisco, Cal. Theatrical scenery and properties, 268.
New York, N. Y., from Savannah, Ga. Oak staves, 229.
New York from Cleveland, Ohio. Fresh meat and packing house products, 612.
Newport News, Va., to St. Nicholas and New Philadelphia, Pa. Mine props, 327.

Newport News, Va., to Shenandoah, Pa. Mine props, 327.
Niotaze, Kans., to Salt Lake City, Utah. Petroleum products, 90.
Norfolk, Va., from Fremont, N. C. Cotton linters, 227.
Norfolk, Va., to North Carolina. Commercial fertilizer, 34.
Norfolk, Va., to Shenandoah, Pa. Mine props, 327.
Norris, S. C., from Elizabethton, Tenn. Maple lumber, 137 (139).
North Atlantic ports from California. Canned goods, 62 (63).
North Birmingham, Ala., to Watervliet, Mich. Cast iron pipe, 168.
North Carolina to Central freight association territory. Tobacco, 120.
North Carolina from Norfolk, Va. Commercial fertilizer, 34.
North Carolina to southeastern territory. Tobacco, 353.
North Dakota to Creston, Iowa, and other points. Potatoes, 407.
North Dakota from Harrison, Springston, and Rose Lake, Idaho. Pine and fir lumber, 591.
North Dakota to various destinations. Potatoes, 407.
North Tonawanda, N. Y., from Fort Edward, N. Y., via Sayre, Pa. Wrapping paper, 75.
Northampton County, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Northampton County, Va., to central freight association, trunk line, New England, Canadian, and western trunk line territories. Vegetables, 436.
Northampton County, Va., to Philadelphia, Pa., New York, N. Y., and Washington, D. C. Vegetables, 436.
Oakland, Cal., from Winnemucca, Elko, Deeth, and Jungo, Nev. Sheep, 425.
Oakley, Ohio, to Bingham, Utah, failure to stop at Brighton, Ohio, for additional loading. Electrical machinery, 448.
Oelwein, Iowa, from Mims and Astatula, Fla. Oranges and grapefruit, 301.
Official classification territory. Ratings on silk, 50.
Official classification territory from Mason City, Iowa. Salted hog meats, 47.
Official classification territory from Milwaukee, Wis. Iron damper closers, 361.
Official classification territory from Mound, La. Hardwood lumber, 540.
Official, western, and southern classification territories, between points in. Macaroni products, 289.
Ogden, Utah, from Chicago, Ill. Steel, 403.
Ohio to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Ohio from Cleveland, Ohio. Fresh meat and packing house products, 612.
Ohio River, points north of, from Appalachia and St. Charles districts, Va. Divisions on coal and coke, 54.
Ohio River crossings to Florida. Commodity rates, 148.
Oklahoma to Arkansas City, Kans., for beyond. Grain, 207.
Oklahoma to interstate destinations. Minimum weights on flour, 170.
Oklahoma to Las Cruces, N. Mex. Wheat, 483.
Oklahoma from Parkersburg, W. Va., and St. Louis, Mo. Nails, oil-well outfits, and supplies, 416.
Oklahoma to Springfield, Ohio, reshipped to New York, N. Y., for export. Wheat, 371.
Oklahoma to Terrell, Tex. Grain, grain products, and hay, 6.
Okmulgee, Okla., to Gretna, La., reconsigned to Amesville, La., reshipped to Westwego and New Orleans, La., for export. Petroleum tailings, 270.
Okmulgee, Okla., to Salt Lake City, Utah. Petroleum products, 90.
Omaha, Nebr., from Arkansas. Pine and cypress lumber, 118.
Omaha, Nebr., to Kansas. Crackers, cookies, and wafers, 724.
Omaha, Nebr., from Kansas. Returned empty cracker cans, 724.

Onancock Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Onley, Va., to central freight, trunk line, New England, Canadian, and western trunk line territories. Vegetables, 436.
Oran, Mo., to Terre Haute, Ind. Baled straw, 141.
Oregon to and from Canada. Heated car service, 620.
Oregon to Portland, Oreg., and Seattle, Wash. Empty iron oil drums, 350.
Oregon City, Oreg., from Kansas City, Mo. Condensed smoke, 225.
Oslo, Minn., from La Crosse, Wis. Beer, 273 (274).
Oslo, Minn., to La Crosse, Wis. Empty beer packages, 273.
Ottawa, Ohio, to Kentucky. Coal, 87.
Pace Junction, Fla., to Middlesborough, Ky. Yellow pine lumber, 98.
Pacific coast points from Milwaukee, Wis. Iron dampers, 361.
Pacific coast terminals from Kansas City, Mo. Condensed smoke, 225.
Pacific coast terminals from San Antonio, Tex. Delaware punch sirup, 29.
Palisade, Colo., from Leavenworth, Wash. Box shooks, 332.
Palisade, Colo., from Spokane, Wash. Box shooks, 332.
Pardeeville, Wis., to Marion, N. C. Potatoes, 427.
Parkersburg, W. Va., to Kansas, Wyoming, Oklahoma, Texas, and Louisiana. Nails, oil-well outfits, and supplies, 416.
Parral, Ohio, to Wisconsin and Michigan. Sewer pipe, 531.
Payette, Idaho, from Alpine Spur, Idaho. Cedar posts, 339.
Pekin, Ill., to eastern trunk line territory and Atlantic seaboard. Grain and grain products, 187.
Pennsylvania from Cleveland, Ohio. Fresh meat and packing house products, 612.
Pennsylvania mines to "short haul territory." Coal, 144.
Pensacola, Fla., to Gulfport, Miss. Pyrites ore, 432.
Peoria, Ill., to eastern trunk line territory and Atlantic seaboard. Grain and grain products, 187.
Peoria, Ill., from Nashville, Tenn. Binder and canvas slats, 367.
Peoria rate group to Sioux Falls, S. Dak., and northwestern Iowa. Potatoes, 407.
Petersburg, Va. Cancellation of route through, on lumber destined to eastern port cities and interior eastern territory, 191.
Petersburg, Va., from Baltimore, Md. Petroleum and its products, 218.
Philadelphia, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
Philadelphia, Pa., from Accomac and Northampton counties, Va. Vegetables, 436.
Philadelphia, Pa., from Brookville, Pa. Clay hollow building blocks, 457.
Philadelphia, Pa., from Huntington, W. Va. Light steel rails, 110.
Philadelphia, Pa., from Ridge Springs, S. C. Peaches, 571.
Phoenix, Ariz., from San Antonio, Tex. Delaware punch sirup, 29.
Pine Bluff, Ark., from Milwaukee, Wis. Street-washing machines, 314.
Pitts Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Pittsburgh, Pa., from Ravenna, Ohio. Milk, 298.
Plaquemine, La., to Storm Lake, Iowa. Cypress lumber, 198.
Platteville, Wis., from Reno, Pa. Petroleum and its products, 99.
Pocahontas, W. Va., to Charlotte, N. C. Coal, 1.
Pontotoc, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
Poplar Cove Wharf, Va., to central freight association territory, via Baltimore, Md. Vegetables, through routes, 60.
Port Arthur, Tex., from Vicksburg, Miss. Box shooks, 553.
Port Chalmette, La., to Kansas, Missouri, Iowa, Minnesota, Wisconsin, South Dakota, and North Dakota. Sisal, 13.

Portersville, Cal., from Kansas City, Mo. Condensed smoke, 225.
Porterville, Ala., from Mount Pleasant, Tenn. Fertilizer, 253.
Portland, Oreg., from Berea, Ohio. Rough castings, 343.
Portland, Oreg., to Crisp, Simpson, and Falls City, Oreg. Relaying steel rails and fastenings, 223.
Portland, Oreg., from Kansas City, Mo. Condensed smoke, 225.
Portland, Oreg., from Monson, Cal. Watermelons, 719.
Portland, Oreg., to Spokane, Wash. Electric portable lamps and glass shades, 419.
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Potlatch, Idaho, to Victoria, Ill. Lumber, 277.
Prosser, Tex., to New Orleans, La. Staves and forest products, 280.
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Providence, R. I., to and from Tousset, South Swansea, and Fall River, Mass. Passenger fares, 486.
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Reno, Pa., to Platteville, Mineral Point, and Lancaster, Wis. Petroleum and its products, 99.
Rhinehart Spur, La., to Lincolnville and Mahaska, Kans., and San Jon, N. Mex. Yellow-pine lumber, 85.
Richmond, Va. Cancellation of route through, on lumber destined to eastern port cities and interior eastern territory, 191.
Richmond, Va., from Baltimore, Md. Petroleum and its products, 213.
Richmond, Va., from New Orleans, La. Scrap-iron rails, 107.
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Ripley, Miss., from Mount Pleasant, Tenn. Fertilizer, 253 (257).
Roan Mountain, Tenn., to Marietta, Ga. Maple lumber, 137 (138).
Rockford, Ill., from Malone, Fla., reconsigned at Evansville, Ind. Lumber, 133.
Rome, Ga., from Elizabethton, Tenn. Maple lumber and maple flooring, 137 (138).
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Roxbury, Va., to Schuylkill Haven, Pa. Mine props, 327.
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St. Joseph, Mo., from New Orleans and Port Chalmette, La. Sisal, 13.
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St. Louis, Mo., from Terre Haute, Ind. Wooden tent pins, 283.
St. Louis district to Florida. Commodity rates, 148.
St. Louis rate group to Sioux Falls, S. Dak., and northwestern Iowa. Potatoes, 407.
St. Nicholas, Pa., from Newport News, Va. Mine props, 327.
St. Paul, Minn., from Manitowoc, Wis. Coal, 575.
St. Paul, Minn., from New Orleans and Port Chalmette, La. Sisal, 13.
St. Paul, Minn., to and from New York, N. Y., and other points in eastern trunk line territory. Divisions, 157.

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Salem, Oreg., from Monson and Sultana, Cal. Watermelons, 719.
Salt Lake City, Utah, from Missouri, Kansas, and Oklahoma. Petroleum products, 90.
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Sand Point, Idaho, to Leadville, Colo. Cedar poles, 332.
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Sauk Center, Minn., to La Crosse, Wis. Empty beer packages, 273.
Savannah, Ga., from Milwaukee, Wis. Street-washing machines, 314.
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Savannah, Ga., from South Carolina. Logs, 81.
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Seattle, Wash., from Portland, Oreg. Empty iron oil drums, 350.
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Shenandoah, Pa., from Roxbury, Va. Mine props, mine planks, and mine boards, 327.
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Spokane, Wash., to Palisade, Hotchkiss and Grand Valley, Colo., and Thompsons, Utah. Box shooks, 332.
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Tennessee mines to Charlotte, N. C. Coal, 1.
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Tucson, Ariz., from San Antonio, Tex. Delaware punch sirup, 29.
Tulare, Cal., from Kansas City, Mo. Condensed smoke, 225.
Tulsa, Okla., from Marshfield, Mo., reconsigned at Springfield, Mo. Apples, 260.
Vancouver, Wash., from Kansas City, Mo. Condensed smoke, 225.
Vicksburg, Miss., to Port Arthur, Tex. Box shooks, 553.
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Walton, N. Y., to Tacoma, Wash. Baby walkers, 451.
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Western, official, and southern classification territories, between points in. Macaroni products, 289.
Western trunk line territory from Accomac and Northampton counties, Va. Vegetables, 436.
Western trunk line territory from Harborton and Onley, Va. Vegetables, 436.
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Wisconsin to various destinations. Potatoes, 407.
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Woodland, Miss., from Mt. Pleasant, Tenn. Fertilizer, 253 (257).
Wyoming from Parkersburg, W. Va., and St. Louis, Mo. Nails, oil-well outfits, and supplies, 416.
Yerka, Cal., from Kansas City, Mo. Condensed smoke, 225.

ANNOUNCEMENTS AND SPECIAL RULES OF PRACTICE DURING FEDERAL CONTROL.

ANNOUNCEMENT, JUNE 20, 1918.

The act for the federal control of railroads and certain recent orders of the Director General have raised questions regarding the status of some of the cases before the Commission attacking rates not initiated by the United States Railroad Administration. Inquiry has arisen how far the existence of rates initiated under section 10 of the federal control act will limit or preclude the Commission from making lawfully effective orders in proceedings brought prior to such initiation of rates.

The Commission has always lent its active assistance to the settlement of complaints and difficulties between carriers and shippers through informal adjustment. Thousands of complaints and difficulties have been thus disposed of. There seems every reason why under federal control this policy should be continued with reference to complaints involving rates initiated by the United States Railroad Administration. Such action on our part would seem to be mandatory under section 8 of the federal control act, and we intend to accord our advice, assistance, and cooperation to that end wherever possible. We understand that the Director General is in accord with this plan of composing difficulties as regards rates initiated by the United States Railroad Administration.

Failing such efforts to compose difficulties or settle causes of complaint informally, the Commission is required under section 10 of the federal control act, upon complaint to enter upon a hearing concerning the justness and reasonableness of so much of any order made thereunder as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under federal control. Save for the applicable provisions of this statute, the jurisdiction of the Commission remains what it has been in the past. The Commission has not made and can not make any commitment which will preclude its full exercise of the jurisdiction vested in it.

A rate initiated by the United States Railroad Administration can not be lawfully altered by the Commission, except on complaint after hearing at which the United States Railroad Administration is entitled to be heard. It follows that inasmuch as a new freight rate structure becomes effective June 25, next, some of these rates might conflict with orders which the Commission might enter prescribing rates for the future, even though the orders were entered on the basis of the records in complaints now pending before us. It seems, however, that in certain cases the Commission can make lawfully effective orders in proceedings brought prior to such federal initiation of rates. Thus any pending complaint, where the complainant desires to use the finding of the Commission as a possible basis for a suit at law for reparation, will be disposed of on the present record so far as that matter is concerned. The same is true of cases pending in so far as they seek reparation for damage from rates unlawfully exacted. Allegations of discrimination may, in certain cases, be disposed of on the records now before us. We do not prejudge the question which has been raised whether by amendment to pleadings in pending cases the United

States Railroad Administration may be made a party against which a lawfully effective order may be entered.

The Commission will, as of course, continue consideration and reach conclusions as above indicated in pending cases; where it is possible to make a lawfully effective order without amendment of the pleadings that will be done; and, so far as is possible, the records heretofore built up will be made available for the determinaton of the issues. The dockets in pending cases will be analyzed, and where it appears that doubt exists whether, without amendment or supplemental hearing, the Commission can enter a lawfully effective order, the parties will be so notified.

Such appropriate changes as the federal control act may render necessary will be made in the Commission's Rules of Practice.

SUPPLEMENTAL ANNOUNCEMENT, AUGUST 3, 1918.

Following our announcement of June 20, 1918, the question there reserved was argued before us on July 24, 1918, and waiver was made for the Director General of any requirement that the justness or reasonableness of tariff changes initiated by him should be heard and determined by us only upon original complaints in new proceedings.

Proceedings before us vary greatly as to subject matter and relief sought. Some are brought under the act to regulate commerce, as amended, and others under other statutes. In some the moving parties are shippers, and in others carriers. Some are investigations instituted by us of our own motion. Several proceedings are sometimes consolidated for hearing or disposition. As indicated in our former announcement, the federal control act and the orders which the Director General acting for the President is empowered to make thereunder have raised questions concerning the status of proceedings pending before us. This status can best be determined in each case upon consideration of the elements disclosed. Without attempting to determine their status according to the classes in which they seem to fall, it may be found helpful if we here indicate certain of the criteria which may properly be applied in making such determination.

We are of the opinion that in cases now pending before us, whether heard and submitted or not, in which complaint is made of rates, fares, charges, classifications, regulations, or practices of any common carrier or carriers now under federal control, the Director General of Railroads:

1. Is or may be a proper party defendant where the cause of action accrued wholly prior to federal control, and no order is sought for the future;

2. Is or may be a proper, if not a necessary, party defendant where the cause of action accrued in part or in whole during federal control, and no order is sought for the future;

3. Is a necessary party defendant where the cause of action is as to rates, etc., which since the filing of the complaint have been or shall have been increased or changed by order of the Director General under the federal control act, and the relief sought includes an order for the future limiting said rates, etc., or fixing their relationship to other rates, etc.

Complainants in such cases desiring to bring in the Director General as an additional defendant should so advise us immediately, and as soon as may be thereafter apply for leave to file supplemental complaint setting forth their cause of action against the Director General. Such application must be made as provided in our forthcoming Special Rules of Practice governing the procedure to be followed in matters growing out of federal control. If granted, the record theretofore made may be supplemented in so far as necessary or appropriate. Failing such application on or before October 1, 1918, unless that time is extended by us for cause shown, complainants will be understood as electing to stand upon the issues as made.

Parties will be expected to govern themselves accordingly, and that part of our announcement of June 20, 1918, which reads—

> The dockets in pending cases will be analyzed, and where it appears that doubt exists whether, without amendment or supplemental hearing, the Commission can enter a lawfully effective order, the parties will be so notified—

is hereby withdrawn.

Cases now pending before us otherwise than upon complaint will be made the subject of a separate announcement should occasion require.

Original complaints in new proceedings against the Director General alleging that rates, etc., initiated by him are unjust or unreasonable should name as defendants in addition to the Director General, the carriers not under federal control, and should specify the carriers, or the principal carriers, under federal control, over whose lines the rates, etc., apply. Answer by the Director General will suffice for joinder of issue as to carriers under federal control.

The Special Rules of Practice thus far adopted are the following, effective forthwith:

SPECIAL RULES OF PRACTICE GOVERNING THE PROCEDURE TO BE FOLLOWED IN MATTERS ARISING OUT OF FEDERAL CONTROL, ADOPTED AUGUST 3, 1918.

1. Except as hereinafter provided, proceedings arising out of federal control will be governed by the Commission's Rules of Practice, in so far as applicable.

2. In cases now pending before the Commission:

(a) Complainants desiring that the Director General of Railroads be made an additional defendant should apply therefor as soon as may be, and not later than October 1, 1918. Failing receipt of such application within the time specified, complainants will be understood as electing to stand upon the issues as made.

(b) The application shall be made by filing a motion in writing that the Director General be brought in as party defendant; and that leave be granted to file a supplemental complaint, which must accompany the motion. The motion shall briefly state the grounds therefor, indicating whether the Director General is regarded as a proper or a necessary party defendant, and whether, if he be made a party defendant, the complainant desires further hearing or further argument. The supplemental complaint shall set forth the material facts which have occurred since filing of the original complaint, and state the alleged cause or causes of action against the Director General. It shall not be necessary in any supplemental complaint to set forth any matters in the original complaint unless the special circumstance of the case may require it.

(c) Complainants must furnish a sufficient number of copies of the motion and supplemental complaint for service upon the existing defendants and interveners and the Director General, together with 12 extra copies for the use of the Commission. The motion will be decided either ex parte or on notice in the discretion of the Commission, and the parties advised. Service will be made by the Commission.

(d) The defendants named in the supplemental complaint may within twenty days after service thereof by the Commission file answer thereto, at the same time indicating whether further hearing or argument is desired.

3. Original complaints filed in new proceedings under section 10 of the federal control act, approved March 21, 1918, should name as defendants in addition to the Director General of Railroads, the carriers not under federal control, and should specify the carriers, or the principal carriers under federal control, over whose lines the rates, fares, charges, classifications, regulations, or practices apply. The complainant must furnish as many complete copies of the complaint as there may be parties

defendant to be served, including receivers and operating trustees of carriers not under federal control as many additional copies for the Director General as there are carriers under federal control specified in the complaint and not named as defendants, and 7 additional copies for the use of the Commission. Service of the complaint will be made by the Commission.

4. Answers must comply with the provisions of rule IV of the Rules of Practice, but answer made by the Director General on behalf of carriers under federal control will be deemed sufficient to join issue as to those carriers.

5. In special cases and for good cause shown the time specified in the foregoing rules within which some act may be performed may be extended by the Commission.

6. Motions, supplemental complaints, and answers must be typewritten on one side of the paper only, or be printed. In either case they must conform to the specifications of rule XXI of the Rules of Practice.

7. Intervention may be had by any person under the terms and conditions prescribed in rule II of the Rules of Practice.

SPECIAL ADDITIONAL RULE OF PRACTICE GOVERNING THE PROCEDURE TO BE FOLLOWED IN MATTERS ARISING UNDER THE ACT TO REGULATE COMMERCE, AS AMENDED, SEPTEMBER 13, 1918.

8. Original complaints filed in new proceedings under the act to regulate commerce, as amended, should name as defendants in addition to the Director General of Railroads, the carriers not under federal control, and should specify the carriers, or the principal carriers under federal control, over whose lines the rates, fares, charges, classifications, regulations, or practices apply. Though not required to do so, the complainant may, instead of such specification, name as additional defendants the carriers under federal control over whose lines the rates, fares, charges, classifications, regulations, or practices apply. The complainant must furnish as many complete copies of the complaint as there may be parties defendant to be served, including receivers and operating trustees of carriers not under federal control, as many additional copies for the Director General as there are carriers under federal control specified in the complaint and not named as defendants, and 7 additional copies for the use of the Commission. Service of the complaint will be made by the Commission.

INDEX DIGEST.

ABANDONED STATIONS. *See* STATIONS.

ABSORPTION. *See also* SWITCHING.

A tariff provision that authorizes the absorption of foreign line charges for switching grain and products to and from elevators and mills at the transit points can not be interpreted as meaning that any part of the charges maintained for intracity switching between elevators and mills at the same point shall also be absorbed. Toledo Switching Absorption, 18.

Carrier that performs a switching service, the entire charge for which is absorbed by the line-haul carrier, is not a necessary party to a proceeding involving the reasonableness of the rate under which the absorption is made. Finding in *Du Pont de Nemours Powder Co. Case*, 43 I. C. C., 227, reversed. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203.

The commission has no authority, in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. Id. (204).

ADDITIONAL CHARGE. *See also* SWITCHING.

Charges, in addition to rates, of $2.50 for cleaning and disinfecting single-deck and $4 for double-deck cars, moving interstate, when required by federal, state, county, or municipal authority, or upon request of shippers, found not unlawful and shown to be no more than reasonable. National Live Stock Exchange *v.* A. & S. Ry. Co. 578.

Proposed tariff amendment to relieve respondents of liability for loss or damage of perishable commodities, when requested by shipper and charged for in addition to the rate, from the United States to Canada, found unlawful, but as to traffic from Canada to the United States, proposed rule left with the Canadian commission for determination. Heated Car Service Regulations, 620.

While retaining for the carrier the present extra charge for heating service on traffic moving from domestic points to interior Canadian points, tariff amendment proposes to relieve the carriers from all liability for loss or damage, although the extra charge is intended to compensate it for the element of risk involved. *Held:* Such a rule regarded as hostile to the Cummins amendment. Id. (624).

A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car, less expensive, and not so difficult to operate. In re Private Cars, 652 (680, 709).

ADDITIONAL SERVICE.

When under the law carriers are required to perform an additional service in connection with traffic of a particular description or between specified territories they should be reasonably compensated therefor. National Live Stock Exchange *v.* A. & S. Ry. Co. 578 (589, 590).

ADJUSTMENT OF RATES. *See also* RELATIVE ADJUSTMENT.

Following finding made in original report, 37 I. C. C., 652, in which reasonable rates and zones were prescribed, Charlotte, N. C., was placed in zone 3. Petition for placing of Charlotte in zone 2, a lower rate group, upon rehearing found not justified, in that the proposed change would wholly disrupt the rate adjustment. Bituminous Coal Rates to the Southeast, 1.

General adjustment of rates on grain and grain products from points in Oklahoma to Dallas, Greenville, and other points in Texas, substantially north or west of Terrell and to Terrell does not subject Terrell to undue prejudice. Terrell Commercial Club *v.* T. & P. Ry Co. 6.

On coal from mines in Pennsylvania to "short-haul territory" the rate adjustment shown to be unduly preferential of Alicia, Bridgeport, Pike, and Braznell, Pa., and unduly prejudicial of Diamond, Pa. Rates from Diamond should not be higher than from the other mines here mentioned. Discrimination ordered removed. Diamond Coal & Coke Co. *v.* P. R. R. Co. 144.

ADMINISTRATIVE RULING.

Conference Ruling 474 (c) quoted. Hutton & Bourbonnais Co. *v.* S. Ry. Co. 434 (435).

Conference Ruling 513, reaffirmed. Legality of Express Franks, 599 (601, 604).

Rule 9 (k) of Tariff Circular 18-A, cited. Terre Haute Paper Co. *v.* St. L.-S. F. Ry. Co. 141 (142).

Rule 71 of Tariff Circular 18-A, cited. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240 (241, 242).

Rule 77 of Tariff Circular 18-A, cited. International Paper Co. *v.* D. & H. Co. 75; Gamble Robinson Fruit Co. *v.* F. E. C. Ry. Co. 301 (302).

ADVANCE IN RATES. *See also* APPLICATION; PASSENGER FARES.

In general:

The subsequent increase in one of the components of a combination rate does not of itself justify a joint rate formerly in excess of the aggregate of the intermediate rates. Fort Smith Commission Co. *v.* K. C. S. Ry Co. 135 (136).

By Director General:

On brass plated or coated iron rods from Wallingford, Conn., to Tacoma, Wash., legally applicable rate found unreasonable and reasonable rate prescribed. Director General initiated and directed establishment of a rate which exceeds the present rate, thereby fixing rate to be applied for the future. *Held:* In present state of the pleadings rate so increased is not subject to review by the Commission. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455 (456).

Barytes: Cancellation of commodity rate on crude barytes from Cartersville, Ga., to Hazard, Pa., leaving in effect higher sixth-class rate, found not justified. Reparation awarded. New Jersey Zinc Co. *v.* B. & O. R. R. Co. 429.

Classes and commodities: In original report 46 I. C. C., 527, class and commodity rates from Cincinnati, or through Cincinnati from beyond, by way of Speers Ferry to Johnson City, Tenn., found prejudicial to Johnson City and preferential of Bristol, Tenn.-Va. Carriers undertook to remove discrimination by increasing Bristol rates to the Johnson City basis. Upon rehearing, finding in original report adhered to and removal of discrimination ordered. Chamber of Commerce of Johnson City, Tenn., *v.* S. Ry. Co. 605.

ADVANCE IN RATES—Continued.

Coal: On shipments of coal from points in Kentucky to complainant's yard at Ottawa, Ohio, switching charge formerly absorbed by line-haul carrier was canceled as applying to team tracks. *Held:* Increased charge not justified, and any charge to complainant's yard in addition to line-haul rate to Ottawa will be unreasonable. Ottawa Coal & Supply Co. *v.* D., T. & I. R. R. Co. 87 (88).

Excelsior: Commodity rate on excelsior from Batesville, Ark., to El Paso, Tex., increased from 41 cents to 60 cents, subsequent to Jan. 1, 1910, found justified. Batesville Excelsior Co. *v.* M. P. R. R. Co. 285.

Fish cars, empty: Proposed increased rate for the movement of empty fish cars found justified. The compensation received for the movement of loaded and empty fish cars, as compared with the revenue derived from other equipment, is clearly not a proper measure of the rate on empty fish cars. Express Charges on Empty Fish Cars, 24.

Grain: Proposed cancellation of joint commodity rates on grain from Sioux City, Iowa, and points in Nebraska north of Omaha to points in Colorado south of Pueblo, thereby rendering combination rates higher than the present joint rates, found not justified. Nebraska-Colorado Grain, 79.

Grain and products: Proposed cancellation of the through commodity rates on grain and grain products from East St. Louis, Ill., via the B. & O. S. W. R. R. to Louisville, Ky., or Cincinnati, Ohio, and connections, thence to Tampa and other Florida destinations, leaving in effect increased combination rates, found justified. Commodities from East St. Louis, Ill., 148 (150).

Logs: Cancellation of its special distance scale of rates on logs from stations in South Carolina south of Columbia to Savannah, Ga., and applying in lieu thereof commodity rates applicable to lumber, found not justified. Reasonable maximum rates prescribed and reparation awarded. Pierpoint Mfg. Co. *v.* S. Ry. Co. 81.

Lumber: On gum lumber from Sulligent, Ala., to destinations in Michigan, Wisconsin, and Indiana, that factor of the rate from Sulligent to Thebes, Ill., was increased to obviate fourth section departures, causing a disruption of the existing relationship with Mississippi delta points, which was later readjusted. *Held:* Rates not shown unreasonable or unduly prejudicial in favor of Greenville and points in Mississippi delta territory. Kentucky Lumber Co. *v.* St. L.-S. F. Ry. Co. 22.

Lumber: Proposed increased rates on pine and cypress lumber, from certain points in Arkansas to Kansas City, Mo., Omaha, Nebr., and other western points found not justified. Evidence relied solely upon an attempt to remove fourth section departures, relief of which was granted in 41 I. C. C., 565. Lumber from Arkansas Points, 118.

Meats: On salted hog meats from Mason City, Iowa, to eastern destinations, proportional rates east and west of the Mississippi River apply. Tariffs applicable east of the Mississippi provide specific rates when shipped in bulk, but not in packages. Proposed rates in packages higher than in bulk, found unreasonable. Decker & Sons *v.* B. & O. R. R. Co. 47.

Milk: Distance rates on certain less-than-carload shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, Pa., moving in passenger trains, found not justified to extent they exceeded subsequently established rate of 22 cents per case under refrigeration and 18 cents when not under refrigeration. Reparation awarded. Rieck Co. *v.* B. & O. R. R. Co. 298.

ADVANCE IN RATES—Continued.

Potatoes: Proposed increased rates on potatoes equivalent to 1.2 cents a bushel from producing sections in Minnesota, Michigan, Wisconsin, North Dakota, and South Dakota to various jobbing and consuming points, and also from Chicago, Peoria, and St. Louis rate groups, to Sioux Falls, S. Dak., and points in northwestern Iowa taking Sioux Falls rates not justified. Western Trunk Line Potatoes, 407 (413).

Sand and gravel: In original report, 46 I. C. C., 412, rates on sand and gravel from Allison Branch, Ill., to certain points in Indiana, found unreasonable and rates the same as intrastate rates from Emison prescribed. Rates from Emison subsequently made higher than those formerly in effect from Allison Branch. Upon rehearing former finding of unreasonableness reversed. Anderson-Theobald Co. *v.* V. R. R. Co. 596.

Sisal: Proposed increase in domestic rates on sisal from New Orleans and Port Chalmette, La., to destinations in Kansas, Missouri, Iowa, Minnesota, Wisconsin, South Dakota, and North Dakota to a basis of 6 cents higher than the import rates, found justified. Sisal from New Orleans, La., 13.

Straw, baled: Rate on, of $27 per car in effect prior to movement of shipments. Schedules seeking increase to $31 suspended. While schedules under suspension the $27 rate was cancelled. Order vacated Sept. 30, 1915, and rate of $31 then became effective. *Held:* Change was in violation of the Commission's tariff rules and of the spirit of the suspension order and rates charged prior to Sept. 30, 1915, found unreasonable and illegal thereafter. Reparation awarded. Terre Haute Paper Co. *v.* St. L.-S. F. Ry. Co. 141.

Sweet potatoes: On sweet potatoes from Dardanelle, Ark., to Joplin, Mo., proposed increase of commodity rate from 22 cents to 27 cents became effective by expiration of suspension order. Commission later found higher rate not justified and ordered it cancelled, restoring the 22 cent rate. Reparation awarded on shipments involved. Fort Smith Commission Co. *v.* K. C. S. Ry. Co. 109.

Tobacco: Proposed increased rates on smoking tobacco, cigarettes, and plug tobacco from North Carolina points to C. F. A. territory found justified. Southeastern Manufactured Tobacco (No. 2), 120 (125).

Tobacco: Proposed increased rates and differentials under the Virginia cities, on manufactured tobacco from North Carolina manufacturing points to points in southeastern territory, to correspond with that on class traffic, found justified. Southeastern Manufactured Tobacco, 353.

ADVANTAGES AND DISADVANTAGES. *See* LOCATION.

AGENT.

Complainants, acting in the capacity of agents for undisclosed principals, are not, as such, entitled to an award of reparation. Defendant authorized, however, to make refund to complainants upon satisfactory proof from parties damaged. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345 (348, 349).

There can be no valid objection to carriers doing by an agent what they may do themselves, where such agent is not a shipper or otherwise interested in transportation of the articles with respect to which the service is rendered. In re Private Cars, 652 (705).

AGGREGATE OF INTERMEDIATES. *See* THROUGH AND LOCAL.
AGREEMENT.
Under an agreement with the P. R. R. Co., complainant performed a service which should have been performed by defendant, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Navigation Co. *v.* P. R. R. Co. 543.
ALLOWANCES.
Contention that the line-haul rates were sufficiently high to include allowance for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York. *Held:* Shipments came within the exception "in bulk" and failure to make an allowance not found unlawful or unreasonable. Swift & Co. *v.* B. & O. R. R. Co. 103.
In the determination of what should be a reasonable allowance out of a line-haul rate to the Chestnut Ridge Railway for what is substantially a switching service it is not practicable to differentiate between class traffic and commodity traffic. Class Rates from Chestnut Ridge Ry. Stations, 152.
Principles announced in *General Electric Co. Case*, 14 I. C. C., 297 reaffirmed and applied; and complaints of the National Tube Co. for reparation on traffic of its plant at Lorain, Ohio, during period that allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. Demands of same nature by Carnegie Steel Co. also dismissed. National Tube Co. *v.* B. & O. R. R. Co. 489.
During period covered by this action the National Tube Company performed no work within its plant, either directly or through its plant railway, which it could lawfully have called upon the defendant line carriers to do for it, and therefore did no service for the line carriers for which it lawfully could demand compensation. Id. (500).
Obligation of a common carrier service does not extend through the network of interior switching tracks, and any service by line carriers within the plant, without charge in addition to line-haul rate or any compensation to complainant or its industrial railway for performing the service, is unduly preferential of complainant and unlawful. Id. (500).
Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts. In re Private Cars, 652 (686, 709).
Allowance of 3/4 of a cent on the loaded and empty movement for the use of tank cars by carriers should be increased to 1 cent a mile; the increased allowance should be paid for the use of live poultry, palace stock, and heater cars, but not to stock, coke, coal, rack, flat, box, or pocket cars, although they may be privately owned. Id. (652, 709).
Paid by carriers for use of private cars. Id. (665).
The allowance that shall be paid for the use of private cars under all the circumstances and conditions shown must be considered on the average. Id. (683).
Attempt to fix a stated basis of allowances for use of privately owned cars would by no means result in justice to all owners or to all carriers. Id. (683).

ALLOWANCES—Continued.

No attempt made to fix what shall be a reasonable basis from which the amount of the allowance to be paid by the carriers shall be ascertained. Id. (684).

Contended that if a stated charge per car or per 100 pounds is established by carriers, it would necessarily be fixed high enough to cover maximum refrigeration, which would burden the traffic with charges for service not performed or required. *Held:* It is doubtful if any allowance could be agreed upon or prescribed that would be just and reasonable in all cases. Id. (702, 703).

AMBIGUOUS TARIFF.

Tariff provisions which make the application of a rate by a certain route dependent upon the existence of divisions by that route have uniformly been condemned by the Commission as being indefinite, ambiguous, and unlawful, and should be promptly corrected. National Lumber Co. *v.* A., F. & S. R. R. Co. 133 (134).

ANALOGOUS ARTICLES. *See also* COMPARATIVE RATES.

Root beer sirup is analogous to Delaware punch sirup in that it is diluted with water and used as a beverage, and that the values are not greatly different. Delaware Punch Co. of Texas *v.* A., T. & S. F. Ry. Co. 29 (30).

Contention that it is unreasonable to apply higher rates on meats in packages than on meats in bulk, sustained. Tariff provision required in the absence of a specific rating to apply the same rating as is given analogous articles. Decker & Sons *v.* B. & O. R. R. Co. 47 (49).

Salted hog meats in packages are more closely analogous to the same commodities in bulk than to fresh meats. Id. (49).

On street washing machines, l. c. l., from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago, Ill., moving in special equipment, no specific rating applicable. Class rates applicable to sprinkling wagons, an analogous article, assessed not shown unreasonable or prejudicial compared with rates on various types of heavy vehicles. Kindling Machinery Co. *v.* C. & N. W. Ry. Co. 314.

Rates not in excess of those applicable on street sprinkling wagons under the southern classification should be made applicable to street washing machines by specific provision instead of by analogy, as at present. Id. (317).

There does not appear to be any recognized commercial distinction between the terms wood-pulp board and paper-box board. International Paper Co. *v.* B. & M. R. R. 341 (342).

While the rule of analogy is a necessary business expedient, ratings applied under it are not always to be taken as criteria. Johnson Service Co. *v.* A. A. R. R. Co. 361 (365).

Rating of first class on thermometers and barometers boxed, l. c. l., found reasonable for thermostats in Illinois classification by rule of analogy. Id. (365).

On two l. c. l. shipments of fennel seed from New York, N. Y., to St Louis, Mo., first-class rate applicable to seeds n. o. i. b. n., assessed. Contention that shipments should have been accorded third-class rate applicable to fenugreek seed, an analogous article, not sustained. Hanley & Kinsella Coffee & Spice Co. *v.* T., St. L. & W. R. R. Co. 376 (377).

Official classification rating of fifth class on shipments of terra cotta for building purposes, found not unreasonable as compared with rates on

ANALOGOUS ARTICLES—Continued.
analogous building materials with which it comes into keen competition. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522 (525).

APPENDIX.
1. Comparison of revenues and expenses of all operations for seven months ended July 31, 1917, and seven months ended July 31, 1916, of the principal express companies. Proposed Increase in Express Rates, 385 (393).
2. Comparison of revenues and expenses of domestic express, all operations for seven months ended July 31, 1917 and 1916, of the principal express companies. Id. (394).
3. Statement showing ratios of operating income to gross express transportation revenues (domestic) by months from January, 1915, to July, 1917, inclusive, of the principal express companies. Id. (395).
4. Statement showing effect on proposed increase in rates as applied to domestic transportation operations for seven months ended July 31, 1917, of the principal express companies. Id. (396).

Table 1. Mileage received by refrigerator, tank, and other private-car owners for year 1912, together with a comparison of the total of repairs and depreciation. In re Private Cars, 652 (711).
Table 2. Same as table 1, January 1, 1913, to January 1, 1918. Id. (711).
Table 3. Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators. Id. (714).

APPLICATION.
Section 15: Applications to eliminate that portion of a tariff which permits the routing of grain over the D. & R. G. in connection with other lines from C., St. P., M & O. stations to California terminals, granted. Nebraska-Colorado Grain, 79.
Section 15: Application for authority to cancel through rates on grain via the B. & O. S. W. R. R. from points in the St. Louis district to points in southeastern territory, granted. Commodities from East St. Louis, Ill. 148 (150, 151).
Application of the express companies for a 10 per cent increase in interstate rates granted. Proposed Increase in Express Rates, 385.

ARBITRARIES.
The appearance in a tariff of arbitraries to be allowed connecting carriers beyond a certain gateway does not define the route to be used in reaching that gateway. Lumber from the Southeast, 191 (193).

BACK HAUL.
Charges on certain carloads of petroleum tailings in tank cars from Okmulgee, Okla., to Gretna, La., back hauled to Amesville, La., for barreling, and reshipped to Westwego and New Orleans, La., for export, not shown unreasonable. American Refining Co. *v.* St. L. & S. F. R. R. Co. 270.

BAD-ORDER CARS. *See* EQUIPMENT.

BAGGAGE-CAR SERVICE.
Distance rates on certain less-than-carload shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, Pa., moving in passenger trains, found not justified to extent they exceeded subsequently established rate of 22 cents per case under refrigeration and 18 cents when not under refrigeration. Reparation awarded. Rieck Co. *v.* B. & O. R. R. Co. 298.

BARGES.

Under an agreement with the P. R. R. Co. complainant performed a service which should have been performed by defendant, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Navigation Co. *v.* P. R. R. Co. 543.

BARRELING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (BARRELING).

BILLING.

Access to the billing of a shipper by another and a competitor is unlawful under section 15. In re Private Cars, 652 (704).

BLANKET RATES. *See also* GROUP RATES.

Blanket rate on nuts from California producing points to points in defined territories in and east of the Rocky Mountains, except the territory east of the Mississippi River and south of the Ohio River, and the rates basing thereon to points in the southeastern territory referred to, not shown unreasonable or unduly prejudicial. California Walnut Growers' Asso. *v.* A. & R. R. R. Co. 558 (569).

BOAT LINES.

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., in connection with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with the complainant, found to result in undue prejudice. Joint passenger fares no higher than those maintained by the N. E. S. S. Co. required to be established. Colonial Navigation Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

Water carriers of both passenger and freight are included in the act. Id. (628).

Petition of the N. Y., N. H. & H. R. R. Co. for permission to continue its operation of lines of the New England Steamship Company on Long Island Sound granted, as such lines are being operated in the interest of the public and are of advantage to the commerce and convenience of the people. Steamer Lines on Long Island Sound, 634 (646).

BOTH DIRECTIONS.

Fifth-class rate on green salted hides from Memphis, Tenn., to Fort Smith, Ark., is higher than rates in reverse direction. *Held:* Disparity of rates too great and unreasonable, but not shown to be discriminatory. Maximum reasonable rate prescribed. Merchants' Freight Bureau of Little Rock, Ark., *v.* M. P. R. R. Co. 247.

While the rate in one direction is not always a fair test of what the rate should be in the opposite direction, the greater volume of the traffic may well justify a somewhat lower rate. Id. (248).

With substantially similar transportation conditions affecting rates in opposite directions between the same points, there should be no material disparity in rates, but it is clear that a rate established under particular competitive conditions is not in itself a fair measure of the rate in the opposite direction. West Virginia Rail Co. *v.* B. & O. R. R. Co. 319 (322).

BOUNDARY LINE.

In establishing the boundary lines of groups, carriers should follow some measure of principle, such as radial or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457 (462).

BREAKING RATES.

It is impracticable to arrange so that rates will make and break at various widely separated points and be the same in the aggregate. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

"BULK."

Contention that the line-haul rates were sufficiently high to include allowance for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York. *Held:* Shipments came within the exception "in bulk" and failure to make an allowance not found unlawful or unreasonable. Swift & Co. *v.* B. & O. R. R. Co. 103.

BULKY ARTICLES.

On street-washing machines, l. c. l., from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago, Ill., moving in special equipment, no specific rating applicable. Class rates applicable to sprinkling wagons, an analogous article, assessed not shown unreasonable or prejudicial as compared with rates on various types of heavy vehicles. Kindling Machinery Co. *v.* C. & N. W. Ry. Co. 314.

In original report, Unrep. 1817, shipment of steel from Chicago, Ill., to Ogden, Utah, could not be loaded in side door of box car, but was loaded through end window, and rate charged, based on 5,000 pound minimum, not found unreasonable. Upon further consideration, original finding adhered to. Lowe Co. *v.* C. M. & St. P. Ry. Co. 403.

On a l. c. l. shipment of finished metal molding from St. Louis, Mo., to El Paso, Tex., first-class rate and 40,000 pound minimum assessed because too long to be loaded through the side door of box car. Subsequent to movement, lower minimum prescribed by Commission on shipments of the kind involved. *Held:* Charges assessed not shown unreasonable. Condie-Bray Glass & Paint Co. *v.* C. R. I. & P. Ry. Co. 607.

BURDEN OF PROOF.

Statement that "The burden is on complainant to prove that it was possible by the exercise of ordinary diligence for the defendant to have unloaded car before it was actually unloaded," *Held:* Such a burden not imposed. Youngblood, Inc., *v.* C. R. R. Co. of N. J. 217 (220).

CANADA.

Upon rehearing, finding as to divisions of joint rates prescribed in supplemental report herein, 40 I. C. C., 335, between New York, N. Y., and Duluth, Minn., and points west thereof applicable via routes composed of eastern trunk lines, Grand Trunk Ry. Co. of Canada, Northwestern S. S. Co., and rail lines west of Duluth, modified. Port Huron & Duluth S. S. Co. *v.* P. R. R. Co. 157 (165).

A Canadian line while engaged in through transportation subjects itself to the jurisdiction of the Commission over the joint rates in which it participates, and must abide by the Commission's conclusions as to the reasonableness of such rates and the divisions thereof. Although the Commission may not require the maintenance of joint rates in the future it may determine and prescribe the divisions of rates heretofore in effect. Id. (159).

Proposed tariff amendment to relieve respondents of liability for loss or damage of perishable commodities, when requested by shipper and charged for in addition to the rate, from the United States to Canada, found unlawful, but as to traffic from Canada to the United States, proposed rule left with the Canadian Commission for determination. Heated Car Service Regulations, 620.

CANADA—Continued.

Arrangement regarding joint through rates from Canada to interior points in the United States as being within the general control of the Canadian Commission, and from domestic points to interior Canadian points under the general control of this Commission, has proved to be an efficient working arrangement and will not be departed from by this Commission on light grounds. Id. (622, 623).

Practicability of recommendation that American lines withdraw from existing joint through rates on fruits and vegetables moving to and from Canadian points and the publication of local or proportional rates to and from the border is doubtful. Id. (623).

CANAL.

Under an agreement with the P. R. R. Co., complainant performed a service which should have been performed by defendant in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Nav. Co. *v.* P. R. R. Co. 543.

CANCELLATION. *See also* ADVANCE IN RATES; ROUTES.

Proposed cancellation of the through commodity rates on grain and grain products from East St. Louis, Ill., via the B. & O. S. W. R. R. to Louisville, Ky., or Cincinnati, Ohio, and connections, thence to Tampa and other Florida destinations, leaving in effect increased combination rates, found justified. Commodities from East St. Louis, Ill., 148 (150).

Proposed cancellation of reshipping rates on grain and grain products from Peoria and Pekin, Ill., to eastern trunk line territory via routes embracing portions of the Illinois Central Railroad found to be justified. Grain Reshipped from Peoria, 185 (190-B).

"CANNED."

Word "canned" denotes a process of preservation of the contents rather than the receptacle in which the goods are placed. Eastbound Transcontinental Canned Goods (No. 2), 62 (67).

CAPACITY.

The maximum weight capacity of a standard 36-foot car is 30 tons, and it is possible to load such a car with fertilizer to its weight-carrying capacity. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

CAR DISTRIBUTION.

Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof, whereby each shipper who makes reasonable request may receive his proportionate share of available cars. In re Private Cars, 652 (695, 709).

CAR FITTING.

Meat pans and other appliances used by packers for the transportation of packing-house products shipped with carcass meat, formerly returned free, are now charged for, while hooks for the carriage of carcass meat are returned free. In re Private Cars, 652 (708).

CAR FURNISHING.

Where tariffs are maintained for the use of double-deck cars for the transportation of hogs, calves, sheep, lambs, and goats from primary markets, tariffs should provide that when a double-deck car is ordered and, for the convenience of carriers, two single-deck cars are furnished, the charges therefor should be at the rate and minimum weight for the

CAR FURNISHING—Continued.

double-deck car ordered, provided two days, exclusive of day of notice, is allowed the carriers within which to furnish the car ordered. Cleveland Provision Co. *v.* A. A. R. R. Co. 293.

A carrier is entitled to a reasonable time to furnish equipment, but if before such time expires or thereafter it furnishes equipment different from that requested, then such equipment is furnished for its own convenience, and the shipper should be saved harmless. Id. (296, 297).

A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car, less expensive, and not so difficult to operate. In re Private Cars, 652 (689, 709).

It is well-settled law that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. Id. (671).

The general duty of carriers at common law, and under the act, is to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations. Id. (671).

In the absence of discrimination the power to enforce the duty of furnishing cars does not reside with the Commission. Id. (671).

Contended that if the Commission has not the power to require carriers to furnish tank cars it should be given it by proper legislation, *Held:* System of use and supply of private cars that now exists can not be at once and radically changed without serious consequences to shippers, carriers, and the public. Id. (673).

Published rates of carriers include the furnishing of refrigerator or other cars of special design. Id. (679).

Any attempt to state separate charges for furnishing cars of special types would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight. Id. (680).

When a shipper furnishes his own car for transportation of articles in common use and which move in large volume he relieves the carrier of so much of its obligation as a common carrier. Id. (680).

It is doubtful if carriers could be required to furnish live poultry and palace stock cars, which are specialized to a high degree. Id. (690).

A carrier may make a contract for transportation, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers. Id. (708).

CAR-MILE EARNINGS. *See* EARNINGS.

CARETAKER.

Proposed withdrawal of free transportation of attendants accompanying empty fish cars, found justified. Express Charges on Empty Fish Cars, 24 (27, 28).

CARLOAD AND LESS THAN CARLOAD.

On l. c. l. shipments of live poultry from Missouri points to Trenton, Mo., there dressed and shipped out in c. l. lots to interstate destinations, local l. c. l. rates into transit point found legally applicable. Concentration contemplated collection at a particular point of l. c. l. quantities for reforwarding in c. l. lots and plainly excluded substitution of any kind, and the dressing of the poultry changed its character precisely as dressed meats are made to differ from live stock. Swift & Co. *v.* C., B. & Q. R. R. Co. 233.

CARLOAD AND LESS THAN CARLOAD—Continued.

On paper box board, c. l., from Bellows Falls, Vt., to Brightwood, Mass., and l. c. l. from Bellows Falls to certain points in Massachusetts and Maine, class rates assessed. Lower l. c. l. commodity rates on cardboard legally applicable. *Held:* Legally applicable rates not shown unreasonable, but shipments to points in Massachusetts and Maine to which commodity rates were in effect, found overcharged. International Paper Co. *v.* B. & M. R. R. 341.

The apparent exception in establishing lower rates on most commodities for carload than for less-than-carload shipments is not really an exception, the difference being based not on the quantity shipped but on the difference in the service performed and the general recognition of the carload as unit of shipment. Private Wire Contracts, 731, (758).

CARLOAD MINIMUM. *See* MINIMUM WEIGHT.

CARS. *See also* CLEANING AND DISINFECTING CARS; EQUIPMENT.

Proposed increased rate for the movement of empty fish cars, found justified. The compensation received for the movement of loaded and empty fish cars as compared with the revenue derived from other equipment, is clearly not a proper measure of the rate on empty fish cars. Express Charges on Empty Fish Cars, 24.

When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of the Commission's power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. In re Private Cars, 652 (677).

As a means of removing undue prejudice or unjust discrimination the Commission has the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. Requirement not ordered on this record. Id. (677).

The wide diversity of traffic and the special transportation that many carriers perform would make a car special in one section of the country, or over one railroad, that would, in another section or over other railroads, be an ordinary car. Id. (679).

Handling of empty cars causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. Id. (685, 686).

CHAIRS.

Pad-seat, slip-seat, and spring-seat, described. Murphy Chair Co. *v.* W. Ry. Co. 728.

CHARACTERISTIC OF COMMODITY.

Fertilizer: Fertilizer is sold and shipped on a delivered basis, the manufacturer paying the freight charges. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (37).

Naphthalene: Flake naphthalene is used in the manufacture of dye materials and high explosives. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286 (287).

Sisal: Sisal is a vegetable fibre used for making binder twine and rope, is very dry, hence highly inflammable, readily damaged by moisture and is transported in closed equipment. Sisal from New Orleans, La., 13 (14, 15).

Smoke, condensed: Condensed smoke is a liquid used for preserving meat and is obtained by subjecting certain kinds of wood to intense heat and condensing the resulting vapor or smoke. Wright & Co., Ltd., *v.* A., T. & S. F. Ry. Co. 225.

CHICAGO SWITCHING DISTRICT.

On lumber from Laurel, Miss., billed to Chicago, Ill., delivery consignee's private siding, Des Plains, on the C. & N. W. Ry., joint rate of 26 cents in effect. Rate of 24 cents from Laurel to Chicago named in same tariff. Switching tariff named Des Plains as a Chicago rate point on traffic originating in Mississippi and delivered by the C. & N. W. *Held:* Lower rate of 24 cents per 100 pounds legally applicable, and rates charged found illegal to that extent. Reparation awarded. Wausau Southern Lumber Co. *v.* C. & N. W. Ry. Co. 453.

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CLASS AND COMMODITY RATES. *See also* CLASS RATES; COMMODITY RATES.

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[illegible] RATES—Continued.

Establishment of commodity rates over lines [illegible] on dampers, [illegible] not justified. [illegible]

[illegible] commodity rates on beer a uniform [illegible] from each shipping point in a group, [illegible] grouping controls the [illegible]

[illegible] rates from Iowa Ill. to Sedalia, Mo., found unjust to extent the aggregate of intermediate rates and [illegible] in effect to and from Alton Ill. Reparation awarded. Illinois Sugar & Construction Co. v. C. P. & St. L. R. R. Co. [illegible]

Commodity rates on nuts to points in intermountain territory found unjust and unreasonable to extent they exceeded the fourth-class rates and the aggregate of intermediate rates. California Walnut Growers' Ass'n v. L. & R. R. R. Co. [illegible] (569).

CLASS RATES.

Third-class rates in effect from Milwaukee to points in Illinois classification territory found to have been reasonable on iron dampers, in crates, l. c. l., from and to those points. Johnson Service Co. v. A. A. R. R. Co. 361 (365).

On two l. c. l. shipments of fennel seed from New York, N. Y., to St. Louis, Mo., first-class rate applicable to seeds n. o. i. b. n. assessed. Contention that shipments should have been accorded third-class rate applicable to fenugreek seed, an analogous article, not sustained. Hanley & Kinsella Coffee & Spice Co. v. T., St. L. & W. R. R. Co. 376 (377).

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Rates based on official classification rating of second class on shipments of terra cotta for building purposes, loose, of 10,000 pounds or more, from points in Illinois, Indiana, Missouri, and Colorado to points in C. F. A. and trunk-line territories, found unduly prejudicial as compared with official classification rating of fourth class on similar shipments from eastern points of production to same destinations. Reparation denied. Northwestern Terra Cotta Co. v. A. & St. L. R. R. Co. [illegible]

CLASSIFICATION.

Automobile bodies: Proposed increased rating in official classification, in so far as it would exceed three times first class, and proposed individual minimum weight on passenger automobile bodies [illegible] inches or less in height, l. c. l., found not justified. Classification of Automobile Bodies. [illegible]

Automobile bodies. Proposed increased rating of four times first class, subject to [illegible] minimum weight of [illegible] pounds on passenger automobile bodies exceeding [illegible] inches in height, l. c. l., found justified. [illegible]

CLASSIFICATION—Continued.

Baby walkers: On l. c. l. shipments of baby walkers, k. d., in crates and bundles, from Walton, N. Y., to Tacoma, Wash., rates applicable to toys assessed, found unreasonable to extent they exceeded rates of first class in crates and one and one-half times first class in bundles, applicable to furniture in western classification. Reparation awarded. Harmon & Co. *v.* N. Y., O. & W. Ry. Co. 451.

Chairs: Third-class ratings applicable to furniture applied by defendants on pad, slip, and spring-seat chairs and rockers in western classification territory found legally applicable, and second-class rating on reed chairs and rockers in straight carloads and third class when mixed with other chairs, not shown unreasonable or unduly prejudicial as compared with third-class rating on fiber chairs. Murphy Chair Co. *v.* W. Ry. Co. 728.

Chairs: Fiber chairs are in no sense common chairs, and contention that they are included under the common chair rating because not specifically excluded, as are grass, rattan, reed, or willow chairs, not sustained. Id. (729, 739).

Damper closers: Rates applicable to machinery, n. o. i. b. n., k. d., found legally applicable on iron damper closers, l. c. l., from Milwaukee, Wis., to points in western, Illinois, Canadian, and official classification territories and not shown unreasonable or unduly prejudicial. Johnson Service Co. *v.* A. A. R. R. Co. 361 (364).

Dampers, iron: Second-class rates applicable on iron dampers, in crates, l. c. l., from Milwaukee, Wis., to various points in western classification territory found unreasonable to extent that they exceeded the third-class rates. Johnson Service Co. *v.* A. A. R. R. Co. 361 (363).

Lamps and shades: Western classification rating of double first-class on art glass lamp shades and on l. c. l. shipments of electric lamps, n. o. i. b. n., packed in barrels or boxes, found justified and not shown unreasonable or prejudicial as compared with rating on lamp globes or shades, coppered, leaded, or framed glass, and oil lamps. Seller & Co. *v.* S., P. & S. Ry. Co. 419 (421, 422).

Nails: To rate nails, when constituting part of, and shipped in mixed carloads with oil-well outfits and supplies, with weight not exceeding 500 pounds, higher than rate on mixed carloads of oil-well outfits and supplies, found unreasonable. Parkersburg Rig & Reel Co. *v.* A., T. & S. F. Ry. Co. 416.

Terra cotta: Official classification rating of fifth-class on shipments of terra cotta for building purposes found not unreasonable as compared with rates on analogous building materials with which it comes into keen competition. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522 (525).

Thermostats: Rates on thermostats, l. c. l., from Milwaukee to points in western and Canadian classification territories not shown unreasonable or prejudicial. First-class rating found to have been reasonable on this article, l. c. l., from Milwaukee to points in Illinois classification territory. Johnson Service Co. *v.* A. A. R. R. Co. 361 (365).

CLEANING AND DISINFECTING CARS.

Charges, in addition to rates, of $2.50 for cleaning and disinfecting single-deck and $4 for double-deck cars, moving interstate, when required by federal, state, county, or municipal authority, or upon request of shippers, found not unlawful and shown to be no more than reasonable. Nat' [illegible] Exchange *v.* A. & S. Ry. Co. 578.

BARGES.

Under an agreement with the P. R. R. Co. complainant performed a service which should have been performed by defendant, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Navigation Co. *v.* P. R. R. Co. 543.

BARRELING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (BARRELING).

BILLING.

Access to the billing of a shipper by another and a competitor is unlawful under section 15. In re Private Cars, 652 (704).

BLANKET RATES. *See also* GROUP RATES.

Blanket rate on nuts from California producing points to points in defined territories in and east of the Rocky Mountains, except the territory east of the Mississippi River and south of the Ohio River, and the rates basing thereon to points in the southeastern territory referred to, not shown unreasonable or unduly prejudicial. California Walnut Growers' Asso. *v.* A. & R. R. R. Co. 558 (569).

BOAT LINES.

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., in connection with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with the complainant, found to result in undue prejudice. Joint passenger fares no higher than those maintained by the N. E. S. S. Co. required to be established. Colonial Navigation Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

Water carriers of both passenger and freight are included in the act. Id. (628).

Petition of the N. Y., N. H. & H. R. R. Co. for permission to continue its operation of lines of the New England Steamship Company on Long Island Sound granted, as such lines are being operated in the interest of the public and are of advantage to the commerce and convenience of the people. Steamer Lines on Long Island Sound, 634 (646).

BOTH DIRECTIONS.

Fifth-class rate on green salted hides from Memphis, Tenn., to Fort Smith, Ark., is higher than rates in reverse direction. *Held:* Disparity of rates too great and unreasonable, but not shown to be discriminatory. Maximum reasonable rate prescribed. Merchants' Freight Bureau of Little Rock, Ark., *v.* M. P. R. R. Co. 247.

While the rate in one direction is not always a fair test of what the rate should be in the opposite direction, the greater volume of the traffic may well justify a somewhat lower rate. Id. (248).

With substantially similar transportation conditions affecting rates in opposite directions between the same points, there should be no material disparity in rates, but it is clear that a rate established under particular competitive conditions is not in itself a fair measure of the rate in the opposite direction. West Virginia Rail Co. *v.* B. & O. R. R. Co. 319 (322).

BOUNDARY LINE.

In establishing the boundary lines of groups, carriers should follow some measure of principle, such as radial or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457 (462).

BREAKING RATES.

It is impracticable to arrange so that rates will make and break at various widely separated points and be the same in the aggregate. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

"BULK."

Contention that the line-haul rates were sufficiently high to include allowance for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York. *Held:* Shipments came within the exception "in bulk" and failure to make an allowance not found unlawful or unreasonable. Swift & Co. *v.* B. & O. R. R. Co. 103.

BULKY ARTICLES.

On street-washing machines, l. c. l., from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago, Ill., moving in special equipment, no specific rating applicable. Class rates applicable to sprinkling wagons, an analogous article, assessed not shown unreasonable or prejudicial as compared with rates on various types of heavy vehicles. Kindling Machinery Co. *v.* C. & N. W. Ry. Co. 314.

In original report, Unrep. 1817, shipment of steel from Chicago, Ill., to Ogden, Utah, could not be loaded in side door of box car, but was loaded through end window, and rate charged, based on 5,000 pound minimum, not found unreasonable. Upon further consideration, original finding adhered to. Lowe Co. *v.* C. M. & St. P. Ry. Co. 403.

On a l. c. l. shipment of finished metal molding from St. Louis, Mo., to El Paso, Tex., first-class rate and 40,000 pound minimum assessed because too long to be loaded through the side door of box car. Subsequent to movement, lower minimum prescribed by Commission on shipments of the kind involved. *Held:* Charges assessed not shown unreasonable. Condie-Bray Glass & Paint Co. *v.* C. R. I. & P. Ry. Co. 607.

BURDEN OF PROOF.

Statement that "The burden is on complainant to prove that it was possible by the exercise of ordinary diligence for the defendant to have unloaded car before it was actually unloaded," *Held:* Such a burden not imposed. Youngblood, Inc., *v.* C. R. R. Co. of N. J. 217 (220).

CANADA.

Upon rehearing, finding as to divisions of joint rates prescribed in supplemental report herein, 40 I. C. C., 335, between New York, N. Y., and Duluth, Minn., and points west thereof applicable via routes composed of eastern trunk lines, Grand Trunk Ry. Co. of Canada, Northwestern S. S. Co., and rail lines west of Duluth, modified. Port Huron & Duluth S. S. Co. *v.* P. R. R. Co. 157 (165).

A Canadian line while engaged in through transportation subjects itself to the jurisdiction of the Commission over the joint rates in which it participates, and must abide by the Commission's conclusions as to the reasonableness of such rates and the divisions thereof. Although the Commission may not require the maintenance of joint rates in the future it may determine and prescribe the divisions of rates heretofore in effect. Id. (159).

Proposed tariff amendment to relieve respondents of liability for loss or damage of perishable commodities, when requested by shipper and charged for in addition to the rate, from the United States to Canada, found unlawful, but as to traffic from Canada to the United States, proposed rule left with the Canadian Commission for determination. Heated Car Service Regulations, 620.

CANADA—Continued.

Arrangement regarding joint through rates from Canada to interior points in the United States as being within the general control of the Canadian Commission, and from domestic points to interior Canadian points under the general control of this Commission, has proved to be an efficient working arrangement and will not be departed from by this Commission on light grounds. Id. (622, 623).

Practicability of recommendation that American lines withdraw from existing joint through rates on fruits and vegetables moving to and from Canadian points and the publication of local or proportional rates to and from the border is doubtful. Id. (623).

CANAL.

Under an agreement with the P. R. R. Co., complainant performed a service which should have been performed by defendant in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Nav. Co. *v.* P. R. R. Co. 543.

CANCELLATION. *See also* ADVANCE IN RATES; ROUTES.

Proposed cancellation of the through commodity rates on grain and grain products from East St. Louis, Ill., via the B. & O. S. W. R. R. to Louisville, Ky., or Cincinnati, Ohio, and connections, thence to Tampa and other Florida destinations, leaving in effect increased combination rates, found justified. Commodities from East St. Louis, Ill., 148 (150).

Proposed cancellation of reshipping rates on grain and grain products from Peoria and Pekin, Ill., to eastern trunk line territory via routes embracing portions of the Illinois Central Railroad found to be justified. Grain Reshipped from Peoria, 185 (190-B).

"CANNED."

Word "canned" denotes a process of preservation of the contents rather than the receptacle in which the goods are placed. Eastbound Transcontinental Canned Goods (No. 2), 62 (67).

CAPACITY.

The maximum weight capacity of a standard 36-foot car is 30 tons, and it is possible to load such a car with fertilizer to its weight-carrying capacity. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

CAR DISTRIBUTION.

Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof, whereby each shipper who makes reasonable request may receive his proportionate share of available cars. In re Private Cars, 652 (695, 709).

CAR FITTING.

Meat pans and other appliances used by packers for the transportation of packing-house products shipped with carcass meat, formerly returned free, are now charged for, while hooks for the carriage of carcass meat are returned free. In re Private Cars, 652 (708).

CAR FURNISHING.

Where tariffs are maintained for the use of double-deck cars for the transportation of hogs, calves, sheep, lambs, and goats from primary markets, tariffs should provide that when a double-deck car is ordered and, for the convenience of carriers, two single-deck cars are furnished, the charges therefor should be at the rate and minimum weight for the

CAR FURNISHING—Continued.

double-deck car ordered, provided two days, exclusive of day of notice, is allowed the carriers within which to furnish the car ordered. Cleveland Provision Co. *v.* A. A. R. R. Co. 293.

A carrier is entitled to a reasonable time to furnish equipment, but if before such time expires or thereafter it furnishes equipment different from that requested, then such equipment is furnished for its own convenience, and the shipper should be saved harmless. Id. (296, 297).

A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car, less expensive, and not so difficult to operate. In re Private Cars, 652 (680, 709).

It is well-settled law that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. Id. (671).

The general duty of carriers at common law, and under the act, is to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations. Id. (671).

In the absence of discrimination the power to enforce the duty of furnishing cars does not reside with the Commission. Id. (671).

Contended that if the Commission has not the power to require carriers to furnish tank cars it should be given it by proper legislation, *Held:* System of use and supply of private cars that now exists can not be at once and radically changed without serious consequences to shippers, carriers, and the public. Id. (673).

Published rates of carriers include the furnishing of refrigerator or other cars of special design. Id. (679).

Any attempt to state separate charges for furnishing cars of special types would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight. Id. (680).

When a shipper furnishes his own car for transportation of articles in common use and which move in large volume he relieves the carrier of so much of its obligation as a common carrier. Id. (680).

It is doubtful if carriers could be required to furnish live poultry and palace stock cars, which are specialized to a high degree. Id. (690).

A carrier may make a contract for transportation, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers. Id. (708).

CAR-MILE EARNINGS. *See* EARNINGS.

CARETAKER.

Proposed withdrawal of free transportation of attendants accompanying empty fish cars, found justified. Express Charges on Empty Fish Cars, 24 (27, 28).

CARLOAD AND LESS THAN CARLOAD.

On l. c. l. shipments of live poultry from Missouri points to Trenton, Mo., there dressed and shipped out in c. l. lots to interstate destinations, local l. c. l. rates into transit point found legally applicable. Concentration contemplated collection at a particular point of l. c. l. quantities for reforwarding in c. l. lots and plainly excluded substitution of any kind, and the dressing of the poultry changed its character precisely as dressed meats are made to differ from live stock. Swift & Co. *v.* C., B. & Q. R. R. Co. 233.

CARLOAD AND LESS THAN CARLOAD—Continued.

On paper box board, c. l., from Bellows Falls, Vt., to Brightwood, Mass., and l. c. l. from Bellows Falls to certain points in Massachusetts and Maine, class rates assessed. Lower l. c. l. commodity rates on cardboard legally applicable. *Held:* Legally applicable rates not shown unreasonable, but shipments to points in Massachusetts and Maine to which commodity rates were in effect, found overcharged. International Paper Co. *v.* B. & M. R. R. 341.

The apparent exception in establishing lower rates on most commodities for carload than for less-than-carload shipments is not really an exception, the difference being based not on the quantity shipped but on the difference in the service performed and the general recognition of the carload as unit of shipment. Private Wire Contracts, 731, (758).

CARLOAD MINIMUM. *See* MINIMUM WEIGHT.

CARS. *See also* CLEANING AND DISINFECTING CARS; EQUIPMENT.

Proposed increased rate for the movement of empty fish cars, found justified. The compensation received for the movement of loaded and empty fish cars as compared with the revenue derived from other equipment, is clearly not a proper measure of the rate on empty fish cars. Express Charges on Empty Fish Cars, 24.

When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of the Commission's power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. In re Private Cars, 652 (677).

As a means of removing undue prejudice or unjust discrimination the Commission has the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. Requirement not ordered on this record. Id. (677).

The wide diversity of traffic and the special transportation that many carriers perform would make a car special in one section of the country, or over one railroad, that would, in another section or over other railroads, be an ordinary car. Id. (679).

Handling of empty cars causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. Id. (685, 686).

CHAIRS.

Pad-seat, slip-seat, and spring-seat, described. Murphy Chair Co. *v.* W. Ry. Co. 728.

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CHICAGO SWITCHING DISTRICT.

On lumber from Laurel, Miss., billed to Chicago, Ill., delivery consignee's private siding, Des Plains, on the C. & N. W. Ry., joint rate of 26 cents in effect. Rate of 24 cents from Laurel to Chicago named in same tariff. Switching tariff named Des Plains as a Chicago rate point on traffic originating in Mississippi and delivered by the C. & N. W. *Held:* Lower rate of 24 cents per 100 pounds legally applicable, and rates charged found illegal to that extent. Reparation awarded. Wausau Southern Lumber Co. *v.* C. & N. W. Ry. Co. 453.

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CLASS AND COMMODITY RATES—Continued.

Establishment of commodity rates lower than the class rates on dampers, l. c. l., from Milwaukee to certain Pacific coast points not justified. Johnson Service Co. *v.* A. A. R. R. Co. 361 (363).

It is patent that no group adjustment of commodity rates can bear a uniform relation to the class rates, from each shipping point in a group, unless, as seldom is the case, precisely the same grouping controls the class scale. Western Trunk Line Potatoes, 407 (411).

Class E rates on common building brick from Dow, Ill., to Sedalia, Mo., found unlawful to extent they exceeded aggregate of intermediate rates and carload minima in effect to and from Alton, Ill. Reparation awarded. Illinois Supply & Construction Co. *v.* C., P. & St. L. R. R. Co. 449.

Commodity rates on nuts to points in intermountain territory found unjust and unreasonable to extent they exceeded the fourth-class rates and the aggregate of intermediate rates. California Walnut Growers' Asso. *v.* A. & R. R. R. Co. 558 (569).

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Rates based on official classification rating of second class on shipments of terra cotta for building purposes, loose, of 10,000 pounds or more, from points in Illinois, Indiana, Missouri, and Colorado to points in C. F. A. and trunk-line territories, found unduly prejudicial as compared with official classification rating of fourth class on similar shipments from eastern points of production to same destinations. Reparation denied. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522.

CLASSIFICATION.

Automobile bodies: Proposed increased rating in official classification, in so far as it would exceed three times first class, and proposed individual minimum weight on passenger automobile bodies 36 inches or less in height, l. c. l., found not justified. Classification of Automobile Bodies, 309 (313).

Automobile bodies: Proposed increased rating of four times first class, subject to individual minimum weight of 1,000 pounds, on passenger automobile bodies exceeding 36 inches in height, l. c. l., found justified. Id. (313).

CLASSIFICATION—Continued.

Baby walkers: On l. c. l. shipments of baby walkers, k. d., in crates and bundles, from Walton, N. Y., to Tacoma, Wash., rates applicable to toys assessed, found unreasonable to extent they exceeded rates of first class in crates and one and one-half times first class in bundles, applicable to furniture in western classification. Reparation awarded. Harmon & Co. *v.* N. Y., O. & W. Ry. Co. 451.

Chairs: Third-class ratings applicable to furniture applied by defendants on pad, slip, and spring-seat chairs and rockers in western classification territory found legally applicable, and second-class rating on reed chairs and rockers in straight carloads and third class when mixed with other chairs, not shown unreasonable or unduly prejudicial as compared with third-class rating on fiber chairs. Murphy Chair Co. *v.* W. Ry. Co. 728.

Chairs: Fiber chairs are in no sense common chairs, and contention that they are included under the common chair rating because not specifically excluded, as are grass, rattan, reed, or willow chairs, not sustained. Id. (729, 739).

Damper closers: Rates applicable to machinery, n. o. i. b. n., k. d., found legally applicable on iron damper closers, l. c. l., from Milwaukee, Wis., to points in western, Illinois, Canadian, and official classification territories and not shown unreasonable or unduly prejudicial. Johnson Service Co. *v.* A. A. R. R. Co. 361 (364).

Dampers, iron: Second-class rates applicable on iron dampers, in crates, l. c. l., from Milwaukee, Wis., to various points in western classification territory found unreasonable to extent that they exceeded the third-class rates. Johnson Service Co. *v.* A. A. R. R. Co. 361 (363).

Lamps and shades: Western classification rating of double first-class on art glass lamp shades and on l. c. l. shipments of electric lamps, n. o. i. b. n., packed in barrels or boxes, found justified and not shown unreasonable or prejudicial as compared with rating on lamp globes or shades, coppered, leaded, or framed glass, and oil lamps. Seller & Co. *v.* S., P. & S. Ry. Co. 419 (421, 422).

Nails: To rate nails, when constituting part of, and shipped in mixed carloads with oil-well outfits and supplies, with weight not exceeding 500 pounds, higher than rate on mixed carloads of oil-well outfits and supplies, found unreasonable. Parkersburg Rig & Reel Co. *v.* A., T. & S. F. Ry. Co. 416.

Terra cotta: Official classification rating of fifth-class on shipments of terra cotta for building purposes found not unreasonable as compared with rates on analogous building materials with which it comes into keen competition. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522 (525).

Thermostats: Rates on thermostats, l. c. l., from Milwaukee to points in western and Canadian classification territories not shown unreasonable or prejudicial. First-class rating found to have been reasonable on this article, l. c. l., from Milwaukee to points in Illinois classification territory. Johnson Service Co. *v.* A. A. R. R. Co. 361 (365).

CLEANING AND DISINFECTING CARS.

Charges, in addition to rates, of $2.50 for cleaning and disinfecting single-deck and $4 for double-deck cars, moving interstate, when required by federal, state, county, or municipal authority, or upon request of shippers, found not unlawful and shown to be no more than reasonable. National Live Stock Exchange *v.* A. & S. Ry. Co. 578.

CLEANING AND DISINFECTING CARS—Contiued.

Cars can not be disinfected properly unless they are thoroughly cleaned; that is to say, disinfecting a car includes cleaning it in a manner satisfactory to a government inspector. A car cleaned for shipments of live stock is simply one from which the refuse has been removed from the floor space. Id. (582).

Table of cost of disinfecting single and double-deck cars for certain periods, shown. Id. (586).

COMBINATION RATES.

On shipments of horses and mules from Grand Island, Nebr., and Kansas City, Mo., to Montgomery, Ala., no joint rates in effect. Combination rates on St. Louis, Mo., and Cairo, Ill., assessed found to have been unlawful to extent they exceeded lower combination rates via Cairo, Ill., and Wickliffe, Ky. Reparation awarded. Wilke *v.* C. & A. R. R. Co. 73.

Combination rates on dried beans from Estancia, N. M, to Muskogee, Okla, and from Estancia, Willard, and Mountainair, N. M., to Durant, Okla., found unreasonable as compared with rates on the same traffic from and to numerous points in the same general territory. Reasonable maximum rates prescribed and reparation awarded. Hale-Halsell Grocery Co. *v.* N. M. C. R. R. Co. 263.

Class rate charged on an iron tank from Lima, Ohio, to Bogalusa, La., found illegal and unreasonable to extent it exceeded charges based on the combination rates applicable to and from Slidell, La., and a weight of 8,500 pounds. Reparation awarded. Universal Iron & Supply Co. *v.* C., H. & D. Ry. Co. 266.

Rates on shipments of dressed poultry, butter, and eggs from Sedalia, Mo., to points east of the Indiana-Illinois state line, found unreasonable to extent they exceeded combination of rates to and from St. Louis, Mo. Reparation awarded. Swift & Co. *v.* A., T. & S. F. Ry. Co. 479.

COMBS, CASS & EASTERN RAILROAD COMPANY.

Found to be a common carrier entitled to maintain and divide joint rates with the St. L.-S. F. Ry. Co. Divisions paid by St. L.-S. F. Ry. Co., on shipments of lumber and forest products should not exceed the maximum prescribed in *The Tap Line Case*, 31 I. C. C., 490. Combs, Cass & Eastern R. R. Co., 221.

COMMODITY RATES.

Proposed change in description of articles now transported under a commodity item provided for canned goods and preserves from California terminals, etc., whereby dried, evaporated, or fresh fruits or raisins, and dried, evaporated, or pickled vegetables, in glass, earthenware, or metal cans, and higher commodity rates now applicable to transportation in wooden containers of same commodities similarly processed and not different in character, are to be imposed, found justified. Eastbound Transcontinental Canned Goods (No. 2), 62.

Commodity rates on potatoes, from producing sections in Minnesota and North Dakota to Creston, Iowa, not shown unreasonable or unduly prejudicial. Western Trunk Line Potatoes, 407 (414).

Following *Dallas Chamber of Commerce Case*, 40 I. C. C., 619, commodity rate of 70 cents per 100 pounds on potatoes from Minnesota and Wisconsin producing points to the Dallas-Fort Worth group in Texas found unreasonable to extent it exceeded 65 cents; same rate to the rest of Texas common point territory not shown unreasonable, discriminatory, or prejudicial as compared with lower rates from Idaho, Colorado, and

COMMODITY RATES—Continued.

California. Reparation awarded. Northern Potato Traffic Asso. *v.* A., T. & S. F. Ry. Co. 528.

Rate charged on sewer pipe from Ohio points to certain eastern destinations in Wisconsin and Michigan found not to have been in violation of section 4 but unjust and unreasonable in so far as they exceeded the aggregate of proportional rates to the Lake Michigan west-bank crossings, so limited as not to apply on traffic to destinations involved, plus the local or proportional rates beyond. Williams Co. *v.* P. Co. 581 (536).

COMMON CARRIER.

Combs, Cass & Eastern R. R. Co. found to be a common carrier entitled to maintain and divide joint rates with the St. L.-S. F. Ry. Co. Divisions paid by St. L.-S. F. Ry. Co. on interstate shipments of lumber and forest products should not exceed the maximum prescribed in *The Tap Line Case*, 31 I. C. C., 490. Combs, Cass & Eastern R. R. Co. 221.

The rules governing the relations between common carriers can not be pleaded as justification for unreasonable or unduly prejudicial rates or practices. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. Louis, 474 (476).

Telephone and telegraph companies are common carriers engaged in the transmission of intelligence and, as to their interstate business, are subject to the provisions of the act. Private Wire Contracts, 731 (757).

Lessees of private wires are not common carriers; and the fact that in Morse private-wire service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires. Id. (759).

Operation of common carriers should be regulated in a broad spirit with a view to the welfare of the entire country and not in such a way as to stifle progress. Id. (760).

The necessities and limitations of the various means of transportation or communication must be recognized; and the greatest care must be exercised in applying to one kind of carrier by analogy rules found necessary in connection with a different kind of carrier. Id. (760).

Various types of common carriers over which the Commission has jurisdiction. Id. (760).

COMMUTATION FARES.

Maintaining commutation and special fares for school children between Providence, R. I., and Bristol, R. I., lower than zone fares between Providence, R. I., and Touisset, South Swansea, and Fall River, Mass., not shown unreasonable but found unduly prejudicial to points and passengers on the Fall River branch and preferential of points and passengers on the Bristol branch. Undue prejudice ordered removed. Gersch *v.* N. Y., N. H. & H. R. R. Co. 486.

COMPANY MATERIAL.

Prior to movement of relaying steel rails, complainant entered into contract with dealers at Portland, Oreg., for delivery f. o. b. that point. Dealers entered into arrangement for delivery at Portland of rails stored at Auburn, Wash., and they were so forwarded as company material. Upon arrival at Portland they were forwarded to Crisp, Simpson, and Fall City, Oreg. *Held:* Transportation beyond Portland intrastate, and beyond jurisdiction of Commission. Valley & Siletz R. R. Co. *v.* S. P. Co. 223.

Prior to arrival at Faithorn yard, Ill., of yellow-pine lumber from Trout, La., to Chicago, Ill., complainant mailed instructions to agent of Erie at

COMPANY MATERIAL—Continued.

Chicago notifying delivery that carriers' storekeeper, Fifty-first Street. Erie informed C., T. H. & S. E. it had no orders covering shipment, and it was held Faithorn yard. Subsequently C., T. H. & S. E. received information that shipment was for storekeeper of the Erie, and delivery was so made. *Held:* Detention due to error on part of carriers, and demurrage charges found illegal. Bay Bros. Lumber Co. *v.* L. & A. Ry. Co. 369.

COMPARATIVE RATES. *See also* ANALOGOUS ARTICLES.

Ashes and cinder: Rates on, compared with rates on fluxing limestone, sand, slag, and crushed stone between points in Pennsylvania and points in Delaware and New Jersey. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203 (205).

Coffee: Rates on coffee from New Orleans, La., to Atlanta, Ga., compared with rates on sugar, rice, and salt. Atlanta Freight Bureau *v.* L. & N. R. R. Co. 397 (399).

Drums, empty: Legally applicable fourth-class rates assessed on interstate l. c. l. shipments of secondhand empty iron oil drums returned from points in Oregon and Washington to Portland, Oreg., and Seattle, Wash., not found unreasonable as compared with rate of one-half fourth-class in effect on secondhand empty barrels, which rate was subsequently established on l. c. l. shipments of secondhand empty iron drums. Standard Oil Co. (California) *v.* N. P. Ry. Co. 350.

Heading: Rates on yellow-pine heading from Dallas, Ala., to West Rutland, Vt., found illegal and unreasonable to extent they exceeded rate on lumber of the kind from which the heading is manufactured Reparation awarded. Noble *v.* L. & N. R. R. Co. 245.

Logs: Contention that the rates on logs should be lower than on lumber on account of lower value and more favorable loading and transportation conditions, and that the average ton-mile earnings are higher on logs than for similar commodities, not sustained. Pierpont Mfg. Co. *v.* S. Ry. Co. 81 (82).

Logs: Cancellation of special distance scale of rates on logs from stations in South Carolina, south of Columbia, to Savannah, Ga., and applying in lieu thereof commodity rates applicable to lumber, found not justified. Reasonable maximum rates prescribed and reparation awarded. Id. (81).

Lumber: Rate on Spanish cedar cigar-box lumber from Brooklyn, N. Y., to Denver, Colo., found unreasonable compared with rate on common lumber, including box shooks. Relationship to be maintained left for determination in *Lumber and Lumber Products Case*, Docket 8131. Knopke Bros. *v.* C. & A. R. R. Co. 465 (467).

Lumber: There is no such difference in transportation conditions to justify the wide difference in rates on Spanish cedar cigar-box lumber and veneered cigar-box lumber. Id. (467).

Macaroni products: Class rates on macaroni products, c. l. and l. c. l., between points in official, western, and southern classification territories, not shown unreasonable or unduly prejudicial as compared with the commodity rates on cereal products. Rates cited in comparison do not warrant disturbing the present adjustment. Macaroni & Noodle Mfrs. *v.* A. G. S. R. R. Co. 289.

Machinery, street washing: On street-washing machines, l. c. l., from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville. Tex., and Chicago, Ill., moving in special equipment, no specific rating applicable.

COMPARATIVE RATES—Continued.

Class rates applicable to sprinkling wagons, an analogous article assessed, not shown unreasonable or prejudicial as compared with rates on various types of heavy vehicles. Kindling Machinery Co. *v.* C. & N. W. Ry. Co. 314.

Meats: Proposed application of fresh-meat rates on shipments of salted hog meat, when shipped in packages, found unreasonable. Decker & Sons *v.* B. & O. R. R. Co. 47 (48).

Mine props: Comparison of rates on mine props from certain points in Delaware, Maryland, and Virginia, with rates on cement, asphalt, anthracite coal, and fertilizer, from points in Pennsylvania and Delaware to points on the N. Y., P. & N. in Maryland and Virginia not helpful. Virginia Pine Timber Co. *v.* N. Y., P. & N. R. R. Co. 327 (330).

Naphthalene, crude: Combination fifth-class rate on crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, found unreasonable compared with rates on similar commodities. Reasonable maximum rate prescribed and reparation awarded. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286 (287, 288).

Nuts: Rates on walnuts and almonds from California producing points to Chicago compared with rates on various other California products. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (564).

Rails, scrap iron: Rate legally applicable on scrap-iron rails from New Orleans, La., to Richmond, Va., found unreasonable to extent it exceeded rate applicable on scrap iron. Reparation awarded. Joseph Iron Co. *v.* M. L. & T. R. R. & S. S. Co. 107.

Rods, brass-plated: No good reason from a transportation standpoint why brass-plated or coated iron rods should be rated higher than brass-covered iron rods, which are used for similar purposes. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455 (456).

Sirup: Rates on Delaware punch sirup from San Antonio, Tex., to Pacific coast terminals and points intermediate thereto not shown to have been unreasonable as compared with rates on root-beer sirup and other analogous articles from defined territories to the same destinations, following *Transcontinental Commodity Rates*, 48 I. C. C., 79. Delaware Punch Co. of Texas *v.* A., T. & S. F. Ry. Co. 29.

Sisal: Average car loading, rates, and car revenues of various commodities compared with average loading, rate, and car revenue applicable to sisal from New Orleans, La., to Sioux Falls, S. Dak. Sisal from New Orleans, La., 13 (15).

Slats: Rates on binder or canvas slats, c. l. and l. c. l. from Nashville, Tenn., to Peoria, East Moline, and Chicago, Ill., and St. Louis, Mo., found unreasonable to extent they exceeded rates applicable to carpenters' molding from and to the same points. Reparation awarded. Nashville Hardwood Flooring Co. *v.* C., B. & Q. R. R. Co. 367.

Spanish cedar: Spanish cedar is listed as a wood of value in the western classification and a higher rate thereon than on common lumber is justified. Knopke Bros. *v.* C. & A. R. R. Co. 465 (467).

Staves: Rate on staves from Savannah, Ga., to New York, N. Y., not shown to be discriminatory or prejudicial as compared with the rates on lumber, laths, shingles, timber, crossties, and box shooks. Moore Stave Co. *v.* S. A. L. Ry. Co. 229.

Tent pins, wooden: Rate on wooden tent pins from Terre Haute, Ind., to St. Louis, Mo., found unreasonable to extent it exceeded the rate appli-

COMPARATIVE RATES—Continued.

cable to lumber between the same points, subject to conclusion pending in *Lumber and Lumber Products Case*, Docket No. 8131. Reparation awarded. Ash Products Co. *v.* V. R. R. Co. 283.

Tent pins, wooden: Contention that because of difference in size, process of manufacture, and value between complainant's pin and the pin concerned in *Miller Mfg. Co., Inc., Case*, Unrep. 2105, a higher rate is justified here, not sustained. Id. (284).

Terra cotta: Rating and carload minimum on clay products of different kinds, and on other building materials, compared with rating and minimum on terra cotta for building purposes. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522 (524).

COMPENSATION.

The computation of mileage as a basis of payment for private cars should be upon the distance of the haul, with reference to distance tables established by carriers. In re Private Cars, 652 (686).

COMPETING LINES.

Allegation by defendants that inasmuch as it now furnishes a rail-and-water route to and from New York City, it can not be required to share its traffic with a competitor not sustained, following *Flour City S. S. Co. Case*, 24 I. C. C., 179, in which case an additional route was required to be established. Colonial Navigation Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (632–633).

COMPETING MARKETS. *See* MARKETS.

COMPETITION.

In general:

During period of operation of railroad by the government competition of the kind contemplated by the Panama Canal act is impossible and the use of water lines can be regulated by the Director General of Railroads in such manner as to bring about maximum transportation efficiency. Steamer Lines on Long Island Sound, 634 (644).

Articles:

Nuts: California nuts are sold in competition with nuts imported from southern Europe. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (559).

Sulphur: The main use of sulphur is in the production of sulphuric acid, and for this purpose it competes with iron pyrites, a crude mineral containing approximately 50 per cent of sulphur. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379 (380, 381).

Terra cotta: Official classification rating of fifth-class on shipments of terra cotta for building purposes found not unreasonable as compared with rates on analogous building materials with which it comes into keen competition. Northwestern Terra Cotta Co. *v.* A. & St. L. R. R. Co. 522 (525).

Market:

Upon further hearing, distance rates and carload minimum applicable to commercial fertilizer from Norfolk, Va., to points in North Carolina higher than for like distances between points in North Carolina found to be unduly prejudicial to Norfolk, it manufacturers and shippers of commercial fertilizer, and in favor of North Carolina points, the manufacturers at such points, and the shippers thereof between points in that state. Reasonable distance rates and carload minimum prescribed. Royster Guano Co. *v.* A. C. L. R. R. Co. 34.

COMPETITION—Continued.
Market—Continued.
While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which rates are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co. 610 (611, 612).
Potential:
Mound, La., not found entitled to the same rates as Vicksburg, Miss., on hardwood lumber to points in official classification territory, inasmuch as the potential competition at Mound is much less than at Vicksburg. Pelican Lumber Co., Inc. *v.* V., S. & P. Ry. Co. 540.
Potential competition at Vicksburg, Miss., and its depressing effect upon rates has been repeatedly recognized by the Commission and higher rates from Vicksburg to Ohio and Mississippi river crossings and points in C. F. A. territory than at present maintained would tend to drive the lumber traffic to the water routes. Id. (541).
River:
Record contains no evidence which would support the view that river competition controls the rate on coffee to Nashville from New Orleans. Atlanta Freight Bureau *v.* L. & N. R. R. Co. 397 (401).
Water:
No competition between Baltimore, Md., and Petersburg, Va., by water, therefore apparently no reason why rates on petroleum and products should not conform to the fourth section in the same manner as the more direct all-rail routes through Potomac Yard. Fourth section relief denied. Richmond Oil Co., Inc., *v.* A. C. L. R. R. Co. 213 (216).
CONCENTRATION IN TRANSIT. *See* TRANSIT ARRANGEMENTS (CONCENTRATION).
CONCURRENCE.
On shipments of cast iron pipe fittings from Chattanooga, Tenn., to Manila, P. I., water carrier controlled by and concurs in tariffs of S. P. Co., although not named therein. Contention that through rate was published only for convenience, and was not binding, *Held:* Tariffs properly concurred in and through transportation subject to Commission's jurisdiction. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240 (242).
CONFERENCE RULING. *See* ADMINISTRATIVE RULING.
CONFLICTING RATES.
Modified transit provisions of tariffs of St. L. & S. F. R. R. Co., applicable to grain, from points in Oklahoma, milled at Arkansas City, Kans., and reshipped beyond, cited and construed. Certain provisions found to conflict prior to amendment and refund of outstanding overcharges authorized. New Era Milling Co. *v.* St. L. & S. F. R. R. Co. 207.
Commodity rate of 45 cents charged on apples from Marshfield, Mo., to Springfield, Mo., reconsigned to Tulsa, Okla., exceeded distance commodity rate of 39 cents legally applicable. Defendant subsequently proposed to establish a commodity rate of 27 cents, but tariff naming this rate made no provision for cancellation of the commodity rates. Rate legally applicable found unreasonable to extent it exceeded rate of 29 cents. Mills & Co. *v.* St. L.-S. F. Ry. Co. 260.
On lumber from Laurel, Miss., billed to Chicago, Ill., delivery consignee's private siding Des Plains, joint rate of 26 cents in effect. Rate of 24

CONFLICTING RATES—Continued.

cents from Laurel to Chicago named in same tariff. Switching tariff named Des Plains as a Chicago rate point on traffic originating in Mississippi, and delivered by the C. & N. W. *Held:* Lower rate legally applicable. Reparation awarded. Wausau Southern Lumber Co. *v.* C. & N. W. Ry. Co. 453.

CONGESTION.

Carload of flour arrived at Jersey City, N. J., February 5, 1916, and complainant on February 12, requested car placed at pier No. 5 for inspection. Due to congestion, delivery not made until February 26, where it remained in storage until March 8, when bill of lading surrendered and shipment forwarded to Newark, N. J. Inasmuch as carrier failed to notify of its inability to deliver, storage charges assessed found illegal and demurrage not lawfully due. Reparation awarded. Youngblood, Inc., *v.* C. R. R. Co. of N. J. 217.

Demurrage charges at Woodhaven, N. Y., on a carload of coal from Remey No. 6 Mine, Pa., found justified. Additional charge of $1 per day after the first five days was permitted to become effective to meet an emergency situation and acute congestion which existed on defendant's line. Lalance & Grosjean Mfg. Co. *v.* L. I. R. R. Co. 374.

CONSIGNOR AND CONSIGNEE.

On peaches from Ridge Springs, S. C., to Philadelphia, Pa., billed "subject to correction" after consignee paid the freight charges, and acting as agent of consignor, sold shipments and remitted proceeds less commission and freight to consignor, defendants presented revised bill of lading naming correct rate and undercharges. *Held:* Undercharges due from party legally responsible, but issue as to party legally liable not within the Commission's jurisdiction. Wilson *v.* P. R. R. Co. 571.

CONSOLIDATED SHIPMENT.

Consolidated shipment belonging to complainant and a second party showed only complainant as consignee. Charges paid by third party. Second party's interest in claim made known at hearing more than two years after charges were paid is not barred by the statute to extent of his interest in the claim. Knopke Bros. *v.* C. & A. R. R. Co. 465 (466).

CONSTRUCTION OF STATUTE.

No construction which is inconsistent with the purpose of the law may be entertained, and anyone claiming the benefit of an exception must bring himself clearly within both the words and the reason thereof. Legality of Express Franks, 599 (603).

It is a general rule of construction that a proviso is not to be understood as adding new matter to the main clause, but rather as saving from its operation certain of the subjects to which it is addressed and modifying the law as to them. Id. (603).

According to the rule of statutory construction, the specific statement of certain limitations in the act is clearly indicative of an intention to exclude any limitation not so stated. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (630).

Upon the ground of clearly expressed intention, the terms of a later special statute must control those of a prior general statute. Id. (630).

Where there are two acts on the same subject the general rule is undoubtedly to give effect to both if possible, but if the two acts are repugnant in any of their provisions the latter act, even though it may contain no repealing clause, will operate to repeal the former act to the extent of the repugnancy. Id. (630).

CONSTRUCTION OF STATUTE—Continued.

There is no principle of statutory construction better settled than that an interpretation which would produce consequences out of harmony with the general purpose of the statute as a whole must be avoided, if possible. Id. (631).

CONTAINERS. *See also* PACKING.

Proposed change in description of articles now transported under a commodity item provided for canned goods and preserves from California terminals, etc., whereby dried, evaporated, or fresh fruits or raisins, and dried, evaporated, or pickled vegetables, in glass, earthenware, or metal cans, and higher commodity rates now applicable to transportation in wooden containers of same commodities similarly processed and not different in character, are to be imposed, found justified. Eastbound Transcontinental Canned Goods (No. 2), 62.

The covering of, or package in which an article is contained, does not stamp with its character the contents of the package. Id. (66).

Legally applicable fourth-class rates assessed on interstate l. c. l. shipments of second-hand empty iron oil drums, returned, from points in Oregon and Washington to Portland, Oreg., and Seattle, Wash., not found unreasonable as compared with rate of one-half fourth-class in effect on second-hand empty barrels, which rate was subsequently established on l. c. l. shipments of second-hand empty iron drums. Standard Oil Co. (California) *v.* N. P. Ry. Co. 350.

"CONTRABAND" MESSAGES.

Status of "contraband" messages can be determined only in a court of competent jurisdiction. Private Wire Contracts, 731 (763).

CONTRACTS. *See also* PRIVATE WIRE SERVICE.

Contention that when original contract of transportation is completed the carriers can not be compelled to enter into a new contract if freight is in defective equipment, not sustained, inasmuch as it would make a substantial right of a shipper depend upon a condition over which it has no control, but which has been created by the carriers themselves, and would permit substantial discriminations between shippers. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. Louis, 474 (475).

A carrier may make a contract for transportation, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers. In re Private Cars, 652 (708).

Private-wire contracts were in force for many years before the amendment of June 18, 1910, and had the Congress desired either to recognize the propriety of such contracts, or to forbid them, it could have expressed this intent in appropriate language, which was not done. Id. (56).

So long as a provision remains a part of the contract it should be enforced. Id. (764).

COST OF DETENTION. *See* DETENTION.

COST OF EQUIPMENT.

Table giving the average cost of refrigerator and tank cars, 1912–1917. In re Private Cars, 652 (689).

COURTS.

In view of the difficult questions so frequently arising out of the relations between trunk line carriers and industries with industrial railways, rulings in this case should be reviewed by the courts in order that some definite principle may be judicially established by which the Commission

COURTS—Continued.

may hereafter be guided in such cases as they arise. National Tube Co. *v.* B. & O. R. R. Co. 489 (504).

CREOSOTING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (CREOSOTING).

CUMMINS AMENDMENT.

On blackstrap molasses from Mobile, Ala., to Memphis, Tenn., shippers required to state actual value and pay higher rate on shipments worth more than 8 cents per gallon, while shippers to St. Louis, Mo., secure lower rate by having been able to declare a value of 8 cents, although limiting the carriers' liability. Rates to Memphis, Tenn., were not authorized by the Commission, and are therefore unlawful. Reasonable rates prescribed. Buckeye Cotton Oil Co. *v.* G., M. & N. Ry. Co. 32.

The Cummins amendment requires rates on domestic traffic, based on value, to be expressly authorized by the Commission before they can be regarded lawful. Id. (33).

The second Cummins amendment placed rates and ratings dependent upon the value "declared in writing by the shipper" and those predicated on the value "agreed upon in writing as the released value of the property" in the same category; such rates and ratings are unlawful unless and until expressly authorized by the Commission. *Express Rates*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335; *Williams Co.*, 48 I. C. C., 269, reaffirmed and followed. Silk Asso. of America *v.* P. R. R. Co. 50 (53).

The decision in *Silk Asso. of America*, 44 I. C. C., 578, in which the official classification ratings of first class and one and one-half times first class on silk valued at $1 per pound or less and in excess of $1 per pound, respectively, stated in writing by the shipper, were justified and approved, furnished lines in official classification territory with express authority to maintain such ratings within the meaning of the second Cummins amendment. Id. (53).

The maintenance of rates on ordinary live stock in terms of value subsequent to the amendment of the act by the Cummins amendment of August 9, 1916, was unlawful. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126 (129).

While retaining for the carrier the present extra charge for heating service on traffic moving from domestic points to interior Canadian points, tariff amendment proposes to relieve the carriers from all liability for loss or damage, although the extra charge is intended to compensate it for the element of risk involved. *Held:* Such a rule regarded as hostile to the Cummins amendment. Heated Car Service Regulations, 620 (624).

DAMAGES.

The fact that reduced rates were subsequently established does not in itself furnish a sufficient basis for an award of reparation. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (254).

Complainants acting in the capacity of agents for undisclosed principals are not, as such, entitled to an award of reparation. Defendant authorized, however, to make refund to complainants upon satisfactory proof from parties damaged. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345 (348, 349).

The Commission may award reparation only to the parties shown to be damaged. Id. (348).

Willingness on behalf of defendants to make reparation on the basis sought, or the subsequent reduction of the rates, is not of itself sufficient to justify an award of reparation. Standard Oil Co. (California) *v.* N. P. Ry. Co. 350 (352).

DAMAGES—Continued.

Charges assessed at 108 per cent of the basic rates on sheep from points in Nevada to San Francisco and Oakland, Cal., billed at a declared value of $4.50 per head, not found unreasonable following *Iowa Railroad Commissioners Case*, 36 I. C. C., 79, but to have been unlawful. Reparation denied. Miller & Lux, Inc., *v.* S. P. Co. 425.

Principles announced in *General Electric Co. Case*, 14 I. C. C., 297, reaffirmed and applied; and complaints of the National Tube Company for reparation on traffic of its plant at Lorain, Ohio, during the period of 12½ months that allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. Demands of the same nature by the Carnegie Steel Co. for reparation also dismissed. National Tube Co. *v.* B. & O. R. R. Co. 489.

Following decision of Supreme Court in *Louisville Cement Co. Case*, 246 U. S., 638, in which it was held that the cause of action accrues and the statute begins to run on the date the freight charges are actually paid, original report modified and reparation awarded on certain portions of the claim previously held barred by the Commission in Unrep, A-333. Louisville Cement Co. *v.* L. & N. R. R. Co., 538.

Live-stock depot at Nashville moved from Seventeenth avenue to Second avenue March 21, 1916. Change not shown in tariff until September 15, 1916. Tariff of one defendant became effective July 25, 1916, showing old location. Change of yards necessitated the driving of mules 1½ miles through town. *Held:* Denial of service at old yard prior to September 15, 1916, was the taking away of a privilege granted by tariff. Reparation awarded. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (552).

Where injustice and hardship to innocent shippers results from unreasonable acts, misconduct, or default of carriers in failure to make proper delivery of shipments, the shipper is entitled to recover from the carrier at fault damages in the sum of the actual or fixed but not more than the reasonable costs of making such delivery. Id. (550).

Losses or extraordinary and unanticipated expenses resulting from the refusal of British agent to inspect or accept delivery of mules at new Union Stock Yards are not such damages as are cognizable in this proceeding. Remedy to be had through recourse to the courts. Id. (551).

In original report, Unrep. A-643, rate of 16 cents found applicable on box shooks from Vicksburg, Miss., to Port Arthur, Tex., and finding reaffirmed in 39 I. C. C., 734. Detailed statement prepared, but defendant refused to certify that shipments consisted of box shooks. *Held:* Evidence conclusively shows shipments consisted of box shooks, although they were billed as box material, which term includes box shooks. Reparation awarded. Anderson-Tully Co. *v.* A. & V. Ry. Co. 553.

Reparation on shipments of nuts from California points to various destinations, denied, following principles announced in the *Anadarko Cotton Oil Case*, 20 I. C. C., 48. California Walnut Growers' Asso. *v.* A. & R. R. R. Co. 558 (570).

In original report, Unrep. 2094, joint rates found unreasonable to extent they exceeded aggregate of intermediate rates. Detailed statement for reparation was prepared, but complainant unable to secure certification of defendant as to certain shipment. Upon further hearing amount of reparation due under original finding determined and order entered. Swift & Co. *v.* T. & P. Ry. Co. 597.

DAMAGES—Continued.

It has frequently been held that nothing in the act to regulate commerce warrants a presumption of damages. Oregon Fruit Co. *v.* S. P. Co. 719 (722).

In the absence of proof of damages to the shipper, the fact that carriers have charged or received rates which violate the long-and-short-haul rule of the fourth section of the act, is not of itself a sufficient basis for an award of reparation. Id. (722).

Rates on crackers, cookies, and wafers, l. c. l., from Omaha, Nebr., to certain points in Kansas, and on empty cracker cans, l. c. l., returned to Omaha from the same Kansas points, found violative of section 4 to extent they exceeded rates from and to Neoga, Chautauqua and other points in western Iowa east of Omaha. Following *Oregon Fruit Co. Case*, 50 I. C. C., 719, reparation denied. Iten Biscuit Co. *v.* C., B. & Q. R. R. Co. 724.

DECLARED VALUE. *See* RELEASED RATES.

DEFECTIVE EQUIPMENT. *See* EQUIPMENT.

DELAY. *See* CONGESTION.

DELIVERY.

Defendant delivered and unloaded shipment 10 days before bill of lading was surrendered. Contention that complainant did not acquire right to control movement until bill of lading was surrendered, held technical and overlooks the practice of unloading for inspection; and shipment did not pass out of carrier's control by being ordered for constructive placement. Youngblood, Inc., *v* C. R. R. Co. of N. J. 217 (220).

As stated by the courts to the contention that lawful delivery may be affected by the line-haul carriers only by placing the inbound cars at the unloading points within the industry or by paying the industry for doing the service itself, does not conform "to the standard of custom;" also fails when tested by the standard of reason. National Tube Co. *v.* B. &. O. R. R. Co. 489 (498).

Where injustice and hardship to innocent shippers results from unreasonable acts, misconduct, or default of carriers in failure to make proper delivery of shipments, the shipper is entitled to recover from the carrier at fault damages in the sum of the actual or fixed, but not more than the reasonable costs of making such delivery, Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (550).

DEMURRAGE. *See also* DETENTION.

On a shipment of lumber from Malone, Fla., to Evansville, Ind., reconsigned to Rockford, Ill., demurrage charges found to have lawfully accrued. Shipment arrived at Evansville and was ordered reconsigned to Hamilton. No joint rate in effect from Malone to Hamilton and carriers could not lawfully comply with order and so notified complainant who then ordered the shipment reconsigned to Rockford. National Lumber Co. *v.* A., F. & S. R. R. Co. 133.

Carload of flour arrived at Jersey City, N. J., February 5, 1916, and complainant on February 12, requested car placed at pier No. 5 for inspection. Due to congestion delivery not made until February 20, where it remained in storage until March 8, when bill of lading surrendered and shipment forwarded to Newark, N. J. Inasmuch as carrier failed to notify of its inability to deliver, storage charges assessed found illegal and demurrage not lawfully due. Reparation awarded. Youngblood, Inc., *v.* C. R. R. Co. of N. J. 217.

DEMURRAGE—Continued.

When request was made for cars for shipments of cotton linters from Fremont, N. C., to East Lyme, Conn., delivering line had an embargo on cotton linters except when loaded 65 bales to the car. Complainant loaded 50 bales to car assuring defendant that a special permit would be obtained, but as no permit was obtained shipments were forwarded to Norfolk, Va. Demurrage accruing during interim not shown unreasonable. Smith *v.* A. C. L. R. R. Co. 227.

Prior to arrival at Faithorn yard, Ill., of yellow-pine lumber from Trout, La., to Chicago, Ill., complainant mailed instructions to agent of Erie at Chicago, notifying delivery that carrier's storekeeper, Fifty-first street. Erie informed C., T. H. & S. E. it had no orders covering shipment and it was held Faithorn yard. Subsequently C., T. H. & S. E., received ininformation that shipment was for storekeeper of the Erie and delivery was so made. *Held:* Detention due to error on part of carriers and demurrage charges found illegal. Bay Bros. Lumber Co. *v.* L. & A. Ry. Co. 369.

Demurrage charges at Woodhaven, N. Y., on a carload of coal from Remey No. 6 Mine, Pa., found justified. Additional charge of $1 per day after the first five days was permitted to become effective to meet an emergency situation and acute congestion which existed on defendant's line. Lalance & Grosjean Mfg. Co. *v.* L. I. R. R. Co. 374.

Private cars standing on tracks of owners shall not be subject to demurrage charges. In re Private Case, 652 (705, 710).

DENSITY OF TRAFFIC. *See* VOLUME OF TRAFFIC.

DEPRECIATION.

Handling of empty car causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. In re Private Cars, 652 (685, 686).

DETENTION.

It seems highly proper to include car detention as one of the items of cost to defendants when such detention is due to the service. National Live Stock Exchange *v.* A. & S. Ry. Co. 578 (588).

DIFFERENTIALS. *See also* "SPLIT DIFFERENTIALS."

Rates on grain and grain products and hay from points in Oklahoma to Terrell, Tex., in group 1, which exceed rates to points in group A by more than 2.5 cents found to subject Terrell to undue prejudice. Terrell Commercial Club *v.* T. & P. Ry. Co. 6 (11).

Nonprejudicial relationship as between rates from Huntington, W. Va., and Pittsburgh, Pa., on rails per long-ton, export and domestic, will require the Huntington rate to New York to be 77-60ths of the contemporaneous Pittsburgh rate to New York, and less by differentials to Philadelphia and Baltimore the same as applicable from Pittsburgh to same points. West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (116).

There is a marked difference between the differential of 20 cents applying on smoking tobacco Carolina over the Virginia cities, and the differentials of 26 and 33 cents applying on plug tobacco, a lower-rated commodity. Southeastern Manufactured Tobacco (No. 2), 120 (125).

Combination rate on iron and steel rails from Huntington, W. Va., to Birmingham, Ala., based upon a differential over Cincinnati, Ohio, found unreasonable and unduly prejudicial as compared with rates to Birmingham from other manufacturing points north of the Ohio River. Reason-

DIFFERENTIALS—Continued.

able maximum rate prescribed and reparation awarded. West Virginia Rail Co. *v.* B. & O. R. R. Co. 319.

Rate on box shooks from Leavenworth, Wash., to Palisade, Colo., found unreasonable to extent that it exceeded by more than 1 cent per 100 pounds the rate from Spokane to Palisade. Reparation awarded. Chaney Co., Ltd., *v.* G. N. Ry. Co. 332 (337).

Rates on cedar poles, in single carloads, from Chewelah, Wash., Sand Point and Colalla Spur, Idaho, to Mohrland, Utah, Leadville and Montrose, Colo., and on cedar posts from Gravel Pit, Idaho, to Alamosa, Colo., found unreasonable to extent they exceeded rates in effect from Spokane by more than 2 cents. Id. (338).

Rate on cedar posts from Ione, Wash., to Helper, Colo., found unreasonable to extent it exceeded by more than 3 cents the rate from Spokane. Id. (338).

Following *Chaney Co. Case*, 50 I. C. C., 332, rate on cedar posts from Alpine Spur, Idaho, to Payette, Idaho, via an interstate route, found unreasonable to extent it exceeded by more than 3 cents the rate from Spokane, Wash. Ewing & Co., Ltd., *v.* S. I. Ry. Co. 339.

Proposed increased rates and differentials under the Virginia cities on manufactured tobacco from North Carolina manufacturing points to points in southeastern territory, to correspond with that on class traffic, found justified. Southeastern Manufactured Tobacco, 353.

Contention that by maintaining lower rates on fine coal than on lump coal to Clinton, Davenport, and Burlington, Iowa, from Illinois coal fields, while failing to observe such a differential with respect to rates to Muscatine, subjects Muscatine to undue prejudice, not sustained. Block Co. *v.* A., T. & S. F. Ry. Co. 469 (472, 473).

DIRECTOR GENERAL.

On brass-plated or coated-iron rods from Wallingford, Conn., to Tacoma, Wash., legally applicable rate found unreasonable and reasonable rate prescribed. Director General initiated and directed establishment of a rate which exceeds the present rate, thereby fixing rate to be applied for the future. *Held:* In present state of the pleadings rate so increased is not subject to review by the Commission. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455 (456).

DISCRIMINATION. *See also* PREFERENCES and PREJUDICES.

Contention that the rates on logs should be lower than on lumber, on account of lower value and more favorable loading and transportation conditions, and that the average ton-mile earnings are higher on logs than for similar commodities, not sustained. Pierpont Mfg. Co. *v.* S. Ry. Co. 81 (82).

Contention that when original contract of transportation is completed the carriers can not be compelled to enter into a new contract if freight is in defective equipment, not sustained, inasmuch as it would make a substantial right of a shipper depend upon a condition over which it has no control, but which has been created by the carriers themselves, and would permit substantial discriminations between shippers. Merchants' Exchange of St. Louis *v.* T. R. R. Asso. of St. Louis, 474 (475).

Contention that it is unreasonable and an unjust discrimination against Toledo to charge it 18.3 cents on wheat from Missouri River, while Chicago pays but 12 cents, not sustained. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (519, 521).

DISCRIMINATION—Continued.

It is well settled that discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored, and that generally a competitive relation between the commodities must appear. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (568).

In original report, 46 I. C. C., 527, class and commodity rates from Cincinnati, or through Cincinnati from beyond, by way of Speer's Ferry to Johnson City, Tenn., found prejudicial to Johnson City and preferential of Bristol, Tenn.-Va. Carriers undertook to remove discrimination by increasing Bristol rates to the Johnson City basis. Upon rehearing, finding in original report adhered to and removal of discrimination ordered. Chamber of Commerce of Johnson City, Tenn. *v.* S. Ry. Co. 605.

Question whether or not a railroad company can be guilty of discrimination when the preferential treatment which produces the discrimination is accorded a steamship company which it owns by stock control, must be answered in the affirmative, and the idea that jurisdiction of the Commission is defeated by reason of such common ownership must be untenable. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

Rates on watermelons from Monson and Sultana, Cal., to Salem, Corvallis, Portland, and Medford, Oreg., not shown unreasonable or unjustly discriminatory as compared with rates from Dinuba, inasmuch as no "like kinds of traffic" moved between these points at any other compensation than that which complainant paid. Oregon Fruit Co. *v.* S. P. Co. 719.

Order requiring the removal of unjust discrimination or undue preference is in the alternative and in the case of rates may be complied with by reducing the higher to the level of the lower, by increasing the lower to the level of the higher, or by placing both upon some other common level. Private Wire Contracts, 731 (761).

DISINFECTING CARS. *See* CLEANING AND DISINFECTING CARS.

DISPARITY OF RATES.

Fifth-class rate on green salted hides from Memphis, Tenn., to Fort Smith, Ark., is higher than rates in reverse direction. *Held:* Disparity of rates too great and unreasonable, but not shown to be discriminatory. Maximum reasonable rate prescribed. Merchants Freight Bureau of Little Rock, Ark., *v.* M. P. R. R. Co. 247.

DISTANCE.

Distance is not the only element to be considered in determining whether a rate is too high. West Virginia Rail Co. *v.* P. R. R. Co. 304 (306).

DISTANCE RATES.

Upon further hearing, distance rates and carload minimum applicable to commercial fertilizer from Norfolk, Va., to points in North Carolina, higher than for like distances between points in North Carolina, found unduly prejudicial to Norfolk, its manufacturers and shippers of commercial fertilizer, in favor of North Carolina points, manufactures at such points and the shippers thereof between points in that state. Reasonable distance rates and carload minimum prescribed. Royster Guano Co. *v.* A. C. L. R. R. Co. 34.

Cancellation of its special distance scale of rates on logs from stations in South Carolina, south of Columbia, to Savannah, Ga., and applying in lieu thereof commodity rates applicable to lumber, found not justified. Reasonable maximum rates prescribed and reparation awarded. Pierpont Mfg. Co. *v.* S. Ry. Co. 81.

DISTANCE RATES—Continued.

Rate on apples from Marshfield, Mo., to Springfield, Mo., reconsigned to Tulsa, Okla., found unreasonable to extent it exceeded the reasonable maximum rate prescribed herein. Reparation awarded. Mills & Co. *v.* St. L.-S. F. Ry. Co. 260.

While difference between rates on wheat from Texas points to Las Cruces, N. Mex., and to El Paso, Tex., is large, the mere existence of the intrastate distance rates to El Paso without a showing that any shipments ever moved thereunder, affords no basis for a condemnation of the interstate rates to Las Cruces. Mesilla Valley Produce Exchange *v.* A., T. & S. F. Ry. Co. 483 (485, 486).

DISTURBANCE OF ADJUSTMENT.

On gum lumber from Sulligent, Ala., to destinations in Michigan, Wisconsin, and Indiana, that factor of the rate from Sulligent to Thebes, Ill., was increased to obviate fourth section departures, causing a disruption of the existing relationship with Mississippi delta points, which was later readjusted. *Held:* Rates not shown unreasonable or unduly prejudicial in favor of Greenville and points in Mississippi delta territory. Kentucky Lumber Co. *v.* St. L.-S. F. Ry. Co. 22.

An unreasonable or unjustly discriminatory rate may not be allowed to stand merely because other rates will be affected by a change therein. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126 (129).

Class rates on macaroni products, c. l. and l. c. l., between points in official, western, and southern classification territories, not shown unreasonable or unduly prejudicial as compared with the commodity rates on cereal products. Rates cited in comparison do not warrant disturbing the present adjustment. Macaroni & Noodle Mfrs. *v.* A. G. S. R. R. Co. 289.

A reduction in the rate from Kansas City to Toledo and intermediate points would no doubt bring demands for reductions from Chicago, Peoria, and St. Louis to points in C. F. A. territory. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

DIVERSION. *See* RECONSIGNMENT.

DIVISIONS.

Divisions under rates prescribed on coal and coke from the Appalachia and St. Charles districts in Virginia to points north of the Ohio River found to be just and reasonable as between the L. & N. and its connections north of the Ohio. Louisville & Nashville R. R. Coal and Coke Rates, 54 (58).

Where a road seeks an increase in its divisions of a joint through rate there is cast upon it the burden of proving under all the circumstances that, as compared with the divisions received by its connections, it receives an unreasonably low proportion of the entire rate. Id. (58).

Reasonable divisions to the Interstate Railroad out of the joint rates prescribed from the Appalachia district to points north of the Ohio River found to be 15 cents per ton on coal and 18 cents per ton on coke. Id. (59).

Differences between carriers respecting the division of their joint rates do not afford a lawful ground for the cancellation of the rates. Nebraska-Colorado Grain, 79 (80).

Tariff provisions which make the application of a rate by a certain route dependent upon the existence of divisions by that route have uniformly been condemned by the Commission as being indefinite, ambiguous, and unlawful and should be promptly corrected. National Lumber Co. *v.* A., F. & S. R. R. Co. 133 (134).

DIVISIONS—Continued.

A division which would produce an amount sufficient to cover the cost of service and a fair return on the value of its property would be reasonable, and if the division exceeds this amount, it would to that extent be excessive and amount to a rebate to the principal shipper. Class Rates from Chestnut Ridge Ry. Stations, 152 (153).

Upon rehearing, finding as to divisions of joint rates prescribed in supplemental report herein, 40 I. C. C., 335, between New York, N. Y., and Duluth, Minn., and points west thereof applicable via routes composed of eastern trunk lines, Grand Trunk Railway Co. of Canada, Northwestern S. S. Co., and rail lines west of Duluth, modified. Port Huron & Duluth S. S. Co. *v.* P. R. R. Co. 157 (165).

A Canadian line while engaged in through transportation subjects itself to the jurisdiction of the Commission over the joint rates in which it participates and must abide by the Commission's conclusions as to the reasonableness of such rates and the divisions thereof. Although the Commission may not require the maintenance of joint rates in the future it may determine and prescribe the divisions of rates heretofore in effect. Id. (159).

In prescribing the divisions of joint rates the Commission may not consider the interests of one or more carriers only, but must consider the rights of all. Each carrier is entitled to a fair and equitable division of the rates. The method by which they are obtained is of secondary importance. Id. (164).

Where a method of apportioning divisions has been mutually agreed upon by the interested parties does not result in inequalities that should be corrected, but on the contrary will afford a fair and reasonable apportionment of the rate, the Commission need not prescribe a different basis. Id. (164).

Commission not impressed with the argument that the absence of divisional arrangements between the carriers is justification for closing any available and useful route. Lumber from the Southeast, 191 (197).

Combs, Cass & Eastern R. R. Co., found to be a common carrier entitled to maintain and divide joint rates with the St. L.-S. F. Ry. Co. Divisions paid by St. L.-S. F. Ry. Co., on shipments of lumber and forest products should not exceed the maximum prescribed in *The Tap Line Case*, 31 I. C. C., 490. Combs, Cass & Eastern R. R. Co. 221.

Divisions of joint rates are not controlling in determining the reasonableness of the rate. Chaney Co. *v.* G N Ry. Co. 332 (337).

DOMESTIC RATES. *See also* IMPORT AND DOMESTIC RATES.

Rates on light steel rails from Huntington, W. Va., to Atlantic ports, during period in question, were unreasonable to extent that they exceeded 77-60ths of the domestic rates from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, respectively, under the rate to New York, using the "split differentials." West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (115).

DRAYAGE.

Drayage costs do not determine the reasonableness of charges for trap-car service. Macey Co. *v.* P. M. R. R. Co. 555 (556).

DRESSING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (DRESSING).

DUTY OF CARRIER.

The statute places the duty of initiating rates upon the carriers. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (439).

DUTY OF CARRIER—Continued.

It is well-settled law that the duty of a common carrier is to furnish equipment for transportation of articles it advertises to carry. In re Private Cars, 652 (671).

The general duty of carriers at common law, and under the act, is to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations. Id. (671).

The obligation to treat each shipper fairly, no matter how small his shipments may be in comparison with those of another shipper, is one carriers can not escape. Id. (692).

The duty imposed on the carrier by law is to give equal treatment to all shippers who are in position to demand it. Id. (692).

DUTY OF COMMISSION.

It is the Commission's function and consistent purpose to see that full justice is done between carrier and shipper wherever it be practicable to effect that end. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345 (348).

EARNINGS. *See also* TON-MILE REVENUE.

Blocks, clay building: Rates and ton-mile and car-mile earnings on clay hollow building blocks, from Brookville, Pa., to New York, Philadelphia, Baltimore, and Boston, shown. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457 (462).

Excelsior: Per ton-mile and per car-mile earnings on, based on minimum of 20,000 pounds, from Batesville, Ark., to El Paso, Tex., shown. Batesville Excelsior Co. *v.* M. P. R. R. Co. 235 (236).

Hogs: Rates, short-line distances and ton-mile and car-mile earnings on, from Sioux Falls, S. Dak., and other Missouri River points, to Chicago, Ill., shown. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126 (127).

Lumber, cigar-box: Per car-mile and per ton-mile earnings on, from Brooklyn, N. Y., to Denver, Colo., shown. Knopke Bros. *v.* C. & A. R. R. Co. 465 (467).

Naphthalene: Ton-mile and car-mile revenue on, from Denver, Colo., to Lorain, Ohio, shown. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286 (287).

Ore, pyrites: Per ton-mile and per car-mile earnings on imported, from Pensacola, Fla., to Gulfport, Miss., shown. Gulfport Fertilizer Co. *v.* L. & N. R. R. Co. 432.

Staves: Ton-mile and car-mile revenue on, from Lufkin, Tex., to New Orleans, La., based on short-line distance of 419 miles, shown. Carriere *v.* A. & N. R. R. R. Co. 280 (282).

EMBARGOES.

When request was made for cars for shipments of cotton linters from Fremont, N. C., to East Lyme, Conn., delivering line had an embargo on cotton linters except when loaded 65 bales to the car. Complainant loaded 50 bales to car assuring defendant that a special permit would be obtained, but as no permit was obtained shipments were forwarded to Norfolk, Va. Demurrage accruing during interim not shown unreasonable. Smith *v.* A. C. L. R. R. Co. 227.

On lumber from Andrews, N. C., to New York, N. Y., embargo in effect when the shipment originated, and specified routing could not be followed. Complainant authorized delivery by any available route and shipment forwarded via route taking higher rate. *Held:* Shipment found misrouted in that agent should not have executed bill of lading without first advising of embargo and obtaining further routing instructions. Reparation awarded. Graham County Lumber Co. *v.* S. Ry. Co. 231.

EMINENT DOMAIN.

Private-wire equipment is a part of the quasi-public facilities of a common carrier, was as a rule installed as such, and is entitled as a matter of law to be located under the right of eminent domain. Private Wire Contracts, 731 (740).

EMPTY MOVEMENT.

Movement of petroleum in tank cars from Reno, Pa., to Wisconsin points invariably necessitates an empty car movement eastbound. Empire Oil Works *v.* N. Y. C. R. R. Co. 99 (102).

EQUALIZING CONDITIONS.

Contended that defendants equalize commercial and market conditions on other commodities, but not on nuts, thereby subjecting nuts as a particular kind of traffic to undue prejudice. *Held:* Only basis for this contention is the fact that the rates on the other commodities are lower. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (567).

EQUALIZING RATES.

Rates on anthracite and bituminous coal and on coke from Duluth, Minn., to Sioux Falls, S. Dak., not shown unjust or unreasonable inasmuch as the system of equalizing rates from different lake ports and mines gives complainant competing markets in which to purchase its coal. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co., 610.

EQUIPMENT.

The practice of shipping live fish in carloads was found practicable about five years ago. The cars used for this traffic are made with the best steel underframes, and are equipped by the shipper at an expense of about $2,000 per car, with permanent tanks and mechanism for aerating the water. Express Charges on Empty Fish Cars, 24 (25).

The practice of terminal carriers of requiring complainants, at their own expense, to transfer to other equipment, shipments of hay delivered to team tracks in St. Louis or East St. Louis in bad-order cars, as a precedent to permitting rebilling to points beyond, found an unjust practice. Reparation awarded. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. Louis, 474.

When cars in bad order are accepted by the terminal company, they are subject to all the rights of the shippers, and one of these, recognized by years of practice by carriers throughout the entire country, is that of rebilling in the same cars. Id. (475).

Contention that when original contract of transportation is completed the carriers can not be compelled to enter into a new contract if freight is in defective equipment, not sustained, inasmuch as it would make a substantial right of a shipper depend upon a condition over which it has no control, but which has been created by the carriers themselves, and would permit substantial discriminations between shippers. Id. (475).

ERRONEOUS WEIGHT. *See* WEIGHT.

ERROR.

Double first-class express charges on slate in less-than-carloads from Monson, Me., to Cleveland, Ohio, published in error, found illegal and unreasonable to extent it exceeded the first-class rate formerly in effect and subsequently restored. Reparation awarded. Electric Controller & Mfg. Co. *v.* Am. Exp. Co., 243.

Prior to arrival at Faithorn yard, Ill., of yellow-pine lumber from Trout, La., to Chicago, Ill., complainant mailed instructions to agent of Erie at Chicago, notifying delivery that carrier's storekeeper, Fifty-first street. Erie informed C., T. H. & S. E. it had no orders covering shipment, and

ERROR—Continued.

it was held Faithhorn yard. Subsequently C., T. H. & S. E. received information that shipment was for storekeeper of the Erie, and delivery was so made. *Held:* Detention due to error on part of carriers and demurrage charges found illegal. Bay Bros. Lumber Co. *v.* L. & A. Ry. Co., 369.

On a carload of lumber from Hickory, N. C., to South Fort Plain, N. Y., bill of lading specified "W. S. delivery, Fort Plain." Fort Plain is located on the N. Y. C. while South Fort Plain is located on the West Shore. Inasmuch as West Shore delivery Fort Plain was impossible, carrier's agent at Hickory should have noticed error in bill of lading. *Held:* Following Conference Ruling 474 (c), shipment misrouted. Hutton & Bourbonnais Co. *v.* S. Ry. Co. 434.

EVIDENCE.

In view of the impossibility of securing the evidence which the court indicated should be adduced, and in view of opinion hereinbefore expressed that the refinement suggested is not as a working matter practicable, former finding adhered to. Class Rates from Chestnut Ridge Ry. Stations, 152 (156).

If an unlawful rate or practice exists, it is immaterial by whom or how the irregularity is discovered or through what channels the matter is brought to the attention of the Commission, as each case must be submitted and dealt with on the pertinent facts of record. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (258).

Defendants admitted that certain tariff provision was not complied with on a carload and numerous less than carload shipments of theatrical scenery and properties from New York, N. Y., to San Francisco, Cal., but complainant failed to produce witnesses familiar with the facts or to introduce evidence with respect to the packing and value of the shipments. *Held:* Charges assessed not shown unreasonable or otherwise unlawful. Wise *v.* P. R. R. Co. 268.

Tariff permitted reconsignment at the through rate from point of origin to final destination, when "bona fide rejection by original consignee" is shown. No evidence of record showing shipment was actually rejected at Webster and combination rate on lumber from Greeneville, Tenn., to Webster, N. Y., diverted to Wellesville, N. Y., found legally applicable and not unreasonable. National Wholesale Lumber Dealers' Asso. *v.* S. Ry. Co. 405.

EXHIBITS. *See* APPENDIX.

EX-LAKE GRAIN.

Complaint seeking the establishment of lower ex-lake rates and ex-rail reshipping rates on grain and grain products from Toledo, Ohio, to points in eastern trunk-line territory, on the basis of 78 per cent of the ex-lake and ex-rail rates from Chicago to New York, and the establishment of joint rates on grain from Missouri River cities to Toledo, found not sustained. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

EX-RAIL RESHIPPING RATES.

Complaint seeking the establishment of lower ex-lake rates and ex-rail reshipping rates on grain and grain products from Toledo, Ohio, to points in eastern trunk line territory, on the basis of 78 per cent of the ex-lake and ex-rail rates from Chicago to New York, and the establishment of joint rates on grain from Missouri River cities to Toledo, found not sustained. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

EXPEDITED SERVICE.

Peddler cars, as a rule, are accorded somewhat greater expedition than the ordinary merchandise car. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612 (618).

Expedition increases the cost of a given service and is also a thing of value to the shipper. Id. (618).

EXPORT RATES.

Export rates on light steel rails from Huntington, W. Va., to Atlantic ports, during period in question, were unduly prejudicial to extent that the Huntington-New York rate exceeded 77-60ths of the export rate in effect from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, under the rate to New York. Reparation awarded. West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (115).

On shipments of cast-iron pipe fittings from Chattanooga, Tenn., to Manila, P. I., via San Francisco, Cal., S. P. agent at St. Louis named rate of $13 per net ton. Cars loaded and tendered initial carrier who refused to issue bills of lading naming $13 rate and shipments moved at rate of $16 subsequently established. *Held:* Rate of $13 found legally applicable and reparation awarded. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240.

Charges on certain carloads of petroleum tailings in tank cars from Okmulgee, Okla., to Gretna, La., back hauled to Amesville, La., for barreling and reshipped to Westwego and New Orleans, La., for export, not shown unreasonable. American Refining Co. *v.* St. L. & S. F. R. R. Co. 270.

EXPRESS FRANKS. *See* FRANKS.

EXPRESS RATES.

Double first-class express charges on slate in less-than-carloads from Monson, Me., to Cleveland, Ohio, published in error, found illegal and unreasonable to extent it exceeded the first-class rate formerly in effect and subsequently restored. Reparation awarded. Electric Controller & Mfg. Co. *v.* Am. Exp. Co. 243.

Application of the express companies for a 10 per cent increase in interstate rates granted. Proposed Increase in Express Rates, 385.

FACILITIES.

That the Commission has no power to require the carriers to furnish safe and adequate facilities for the handling of horses and mules at Nashville or prescribe their character is no longer an open question, in the light of the court's holding in *U. S.* v. *P. R. Co.*, 242 U. S., 208. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (552).

FACTOR. *See also* PROPORTIONAL RATES.

On gum lumber from Sulligent, Ala., to destinations in Michigan, Wisconsin, and Indiana, that factor of the rate from Sulligent to Thebes, Ill., was increased to obviate fourth section departures, causing a disruption of the existing relationship with Mississippi delta points, which was later readjusted. *Held:* Rates not shown unreasonable or unduly prejudicial in favor of Greenville and points in Mississippi delta territory. Kentucky Lumber Co. *v.* St. L.-S. F. Ry. Co. 22.

Combination rate on oak lumber from Clearfield, Ky., to Maysville, Ky., reconsigned to New Kensington, Pa., found illegal to extent that the factor of the rate between Morehead and Maysville, exceeded the charges to Cincinnati, Ohio, to which Maysville is intermediate. Reparation awarded. Clearfield Lumber Co. *v.* C. & O. Ry. Co. 98.

The subsequent increase in one of the components of a combination rate does not of itself justify a joint rate formerly in excess of the aggregate

FACTOR—Continued.

of the intermediate rates. Fort Smith Commission Co. *v.* K. C. S. Ry. Co. 135 (136).

Contention that rates on maple lumber and maple flooring from Elizabethton and Roan Mountain, Tenn., to certain points in Georgia, Florida, and South Carolina are unreasonable inasmuch as component beyond Johnson City, Tenn., exceeded rates in effect from Bristol, to which point Johnson City is intermediate, not sustained. Fourth section relief denied. Elizabethton Flooring Co. *v.* E. T. & W. N. C. R. R. Co. 137.

Rates on grapefruit and oranges from Mims and Astatula, Fla., to Oelwein, Iowa, found unreasonable to extent that the components from Jacksonville to Oelwein exceeded 66 cents per box on the shipments from Mims, and joint commodity rate of 81 cents in effect to Minneapolis, Minn., a farther distant point, on shipments from Astatula. Reparation awarded and fourth section relief denied. Gamble Robinson Fruit Co. *v.* F. E. C. Ry. Co. 301.

Class rates on Spanish cedar cigar-box lumber from Brooklyn, N. Y., to Denver, Colo., found unreasonable to extent that the component west of the Mississippi exceeded fifth-class rate applicable on traffic originating east of the Indiana-Illinois state line. Reparation awarded. Knopke Bros. *v.* C. & A. R. R. Co. 465 (467).

FARES. *See* PASSENGER FARES.

FARMING OUT.

Transportation services, when farmed out by a carrier to a shipper, are quite likely to have unlawful results. In re Private Cars, 652 (704).

FEDERAL CONTROL.

During period of operation of railroads by the government competition of the kind contemplated by the Panama Canal act is impossible and the use of water lines can be regulated by the Director General of Railroads in such manner as to bring about maximum transportation efficiency. Steamer Lines on Long Island Sound, 634 (644).

FINDINGS OF COMMISSION.

Full authority and power are conferred upon the Commission by appropriate orders to give effect to its findings. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (628).

FIXING RATES.

Commission may not legitimately consider facts antecedent to transportation in the determination and fixation of rates. Eastbound Transcontinental Canned Goods (No. 2), 62 (66).

FOLLOW LOTS.

Rules governing mixtures of shipments and follow lots should not be different when the traffic is transported in privately owned than in railroad-owned cars. In re Private Cars, 652 (707).

No finding made as to rules governing mixtures of shipments and follow lots in official classification territory as that matter is under consideration of a special committee of experts with a view to suggesting and having adopted rules applicable throughout the entire country. Id. (708).

FOOT-AND-MOUTH DISEASE.

Discussed. National Live Stock Exchange *v.* A. & S. Ry. Co. 578 (581).

FRANKS.

The free transportation of property upon franks issued by express companies to their officers and employees or to the officers and employees of other common carriers in exchange for passes or franks of such common carriers held to be unlawful. Legality of Express Franks, 599 (604).

FRANKS—Continued.

Annual and paster franks described. Id. (601).

Principle announced on July 20, 1917, in *Conference Ruling* 513 reaffirmed. Id. (602, 604).

FREE TRANSPORTATION.

Proposed withdrawal of free transportation of attendants accompanying empty fish cars found justified. Express Charges on Empty Fish Cars, 24 (27, 28).

The free transportation of property upon franks issued by express companies to their officers and employees or to the officers and employees of other common carriers in exchange for passes or franks of such common carriers held to be unlawful. Legality of Express Franks, 599 (604).

Free carriage either of persons or of property is contrary to the general principles to be found in the act to regulate commerce, as amended. See sections 2, 3, and 6. Id. (603).

Any free carriage of passengers that is now lawful is authorized in the form of exceptions to the general principle to be found in the so-called antipass provision of section 1 of the act. Id. (603).

Spirit of the whole act forbids the free carriage of property except where public interests are involved under the conditions specified in section 22. Id. (603).

Meat pans and other appliances used by packers for the transportation of packing-house products shipped with carcass meat formerly returned free are now charged for, while hooks for the carriage of carcass meat are returned free. In re Private Cars, 652 (708).

GATEWAY.

The appearance in a tariff of arbitraries to be allowed connecting carriers beyond a certain gateway does not define the route to be used in reaching that gateway. Lumber from the Southeast, 191 (198).

GROUP RATES.

For the purpose of making rates on grain, grain products, and hay from points in Kansas and Oklahoma, destinations in Texas are arranged in three main groups, herein outlined. Terrell Commercial Club *v.* T. & P. Ry. Co. 6.

Rates on grain and grain products and hay, in carloads, from points in Oklahoma to Terrell, Tex., in group 1, not found unreasonable, but differentials in rates to Terrell which exceed 2.5 cents over rates to points in group A do subject Terrell to undue prejudice. Id. (11).

Terrell, Tex., found not entitled to be included in group A. Id. (12).

The Commission has repeatedly held that where a comparison with a group rate is made the average distance from the point of origin to the various points in the group should be taken. West Virginia Rail Co. *v.* P. R. R. Co., 304 (306).

Ordinarily group adjustments are based largely upon commercial needs, and in such instances the rates are usually made with reference to the average distances from all points in the group to each destination. Western Trunk Line Potatoes, 407 (411).

It is patent that no group adjustment of commodity rates can bear a uniform relation to the class rates, from each shipping point in a group, unless, as seldom is the case, precisely the same grouping controls the class scale. Id. (411).

Rates on clay hollow building blocks, from Brookville, Pa., to Atlantic seaboard cities and points taking same rates, found justified but unduly

GROUP RATES—Continued.

prejudicial to extent they exceed the rates from certain other points in the same clay zone to the same destinations. Humphrey Brick & Tile Co. *v.* P. R. R. Co., 457.

Rate groups ordinarily should be neither broader nor narrower than is required by the conditions on which they are based. Id. (464).

Blanket or group rates resting on commercial, competitive, transportation, natural or geographical conditions, or characteristic traffic, have many times been commended by the Commission, because although they usually involve some disregard of distance, they nevertheless promote a healthy competition and put producers and consumers on a more or less equal basis. Id. (464).

Following *Dallas Chamber of Commerce Case*, 40 I. C. C., 619, commodity rate of 70 cents on potatoes from Minnesota and Wisconsin producing points to the Dallas-Fort Worth group in Texas, found unreasonable to extent it exceeded 65 cents; same rate to the rest of Texas common point territory not shown unreasonable as compared with lower rates from Idaho, Colorado, and California. Reparation awarded. Northern Potato Traffic Asso. *v.* A., T. & S. F. Ry. 528.

GROUPING.

Following finding in original report, 37 I. C. C., 652, in which reasonable rates and zones were prescribed, Charlotte, N. C., was placed in zone 3. Petition for modification by placing Charlotte in zone 2, a lower rate group, upon rehearing found not justified, in that the proposed change would wholly disrupt the rate adjustment. Bituminous Coal Rates to the Southeast, 1.

In establishing the boundary lines of groups, carriers should follow some measure or principle, such as radial or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457 (462).

HALF RATES.

Provision in the private-wire contracts of one respondent that in time of interruption to the private wires the public wires can be used at half the regular rates must be removed. Private Wire Contracts, 731 (763).

HEATED-CAR SERVICE.

While retaining for the carrier the present extra charge for heating service, on traffic moving from domestic points to interior Canadian points, tariff amendment proposes to relieve the carriers from all liability for loss or damage, although the extra charge is intended to compensate it for the element of risk involved. *Held:* Such a rule regarded as hostile to the Cummins amendment. Heated-Car Service Regulations, 620 (624).

ICING. *See* REICING.

IMPORT AND DOMESTIC RATES.

Proposed increase in domestic rates on sisal from New Orleans and Port Chalmette, La., to destinations in Kans., Mo., Iowa, Minn., Wis., S. Dak., and N. Dak., to a basis of 6 cents higher than the import rates, found justified. Sisal from New Orleans, La. 13.

In view of the rates established on sulphur to Hattiesburg, Miss., rates to Hattiesburg and to Meridian, based upon the proportional rates from Sulphur Mines, La., to New Orleans, for export or for coastwise movement, plus the proportional rates from New Orleans to those destinations, applicable to imported pyrites, is not illogical. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379 (382).

IMPORT AND DOMESTIC RATES—Continued.

Domestic rates applicable to fertilizer and fertilizer material, assessed on imported pyrites ore from Pensacola, Fla., to Gulfport, Miss., found unreasonable to extent they exceeded import rate subsequently established. Reparation awarded. Gulfport Fertilizer Co. *v.* L. & N. R. R. Co. 432

INBOUND AND OUTBOUND.

A point is entitled to reasonable outbound rates regardless of the inbound rates. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126 (129).

On l. c. l. shipments of live poultry from Missouri points to Trenton, Mo., there dressed, and shipped out in c. l. lots to interstate destinations, local l. c. l. rates into transit point found legally applicable. Concentration contemplated collection at a particular point of l. c l. quantities for reforwarding in c. l. lots and plainly excluded substitution of any kind, and the dressing of the poultry changed its character as dressed meats are made to differ from live stock. Swift & Co. *v.* C., B. & Q. R. R. Co. 233.

Tariff provisions, manifestly established to control or influence the outbound movement of cotton to Memphis, Tenn., for concentration or compression and reshipment beyond, and denying refunds on the basis of through rates from original points of shipment, found unreasonable. Reparation awarded to parties entitled thereto. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345.

INCOME.

Comparison of operating revenue and operating income of the leading express companies, considered separately and as a unit. Proposed Increase in Express Rates, 385 (388).

Statement showing ratios of operating income to gross express transportation revenues (domestic) of the principal express companies. Id. (395).

INCORPORATION.

Mere fact that the Lake Terminal Railroad Company is incorporated under the general railroad law of Ohio, without regard to its real purpose and actual relation to the tube company, seems to be no substantial basis for its claim to the status of a common carrier. Held to be a plant facility. National Tube Co. *v.* B. & O. R. R. Co. 489 (495).

INDUSTRIAL RAILWAYS.

In the determination of what should be a reasonable allowance out of a line-haul rate to the Chestnut Ridge Railway, for what is substantially a switching service it is not practicable to differentiate between class traffic and commodity traffic. Class Rates from Chestnut Ridge Ry. Stations, 152.

An average cost per carload ascertained upon all cars handled by the Chestnut Ridge Railway, including per diem, is equally applicable to class as well as commodity traffic, and in this case applied to class traffic. Id. (152).

Principles announced in *General Electric Co. Case*, 14 I. C. C. 297, reaffirmed and applied, and complaints of the National Tube Co. for reparation on traffic of its plant at Lorain, Ohio, during period that allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. Demands of the same nature by Carnegie Steel Co. also dismissed. National Tube Co. *v.* B. & O. R. R. Co. 489.

Lake Terminal Railroad is the plant railway at the Lorain plant of the National Tube Company and both companies are owned in the same interest. Id. (491).

INDUSTRIAL RAILWAYS—Continued.

Where access to certain plant railways by the public may be obtained only through the permission of the controlling industry, the holding out is not genuine. Id. (493).

Lake Terminal Railroad shown to be operated for the convenience of the industry and not in any degree for the convenience of the public. Id. (493).

Mere fact that the Lake Terminal Railroad Company is incorporated under the general railroad law of the state of Ohio, without regard to its real purpose and actual relation to the tube company, seems to be no substantial basis for its claim to the status of a common carrier. Held to be a plant facility. Id. (495).

During period covered by this action the National Tube Company performed no work within its plant, either directly or through its plant railway, which it could lawfully have called upon the defendant line carriers to do for it, and therefore did no service for the line carriers for which it lawfully could demand compensation. Id. (500).

Carriers may not lawfully extend their rates over the tracks of the Lake Terminal Railroad to the private dock of the National Tube Company and transportation on the ore from this dock for the Carnegie Steel Company does not begin until the loaded cars are delivered to the trunk-line carriers on the plant interchange track. Id. (503).

In view of the difficult questions so frequently arising out of the relations between trunk-line carriers and industries with industrial railways, rulings in this case should be reviewed by the courts in order that some definite principle may be judicially established by which the Commission may hereafter be guided in such cases as they arise. Id. (504).

INDUSTRIAL SWITCHING.

Obligation of a common carrier service does not extend through the network of interior switching tracks, and any service by line carriers within the plant, without charge in addition to the line-haul rate or any compensation to complainant or its industrial railway for performing the service, is unduly preferential of complainant and unlawful. National Tube Co. *v.* B. & O. R. R. Co. 489 (500).

INFORMAL COMPLAINT. *See* LIMITATION OF ACTION.

INSPECTION IN TRANSIT. *See* TRANSIT ARRANGEMENTS (INSPECTION).

INTENTION.

Upon the ground of clearly expressed intention, the terms of a later special statute must control those of a prior general statute. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (630).

INTERCHANGE SWITCHING.

Placing of a car on a plant interchange track should be regarded as a fair equivalent to the spotting of a car on a spur track. National Tube Co. *v.* B. & O. R. R. Co., 489 (497).

INVESTIGATION.

Private Car, 652.

Private Wire Contracts, 731.

INVESTMENT.

Estimated amount of money invested in private cars. In re Private Cars, 652 (660).

JOINT RATES.

Complaint seeking establishment of joint through rates on grain from Missouri River to Toledo made on the basis of 78 per cent of the Chicago-

JOINT RATES—Continued.

New York rate, breaking on Toledo and resulting the same in amounts as those breaking on Chicago, Peoria, and St. Louis. *Held:* Impracticable to arrange so that rates will make and break at various widely separated points and be the same in the aggregate. Toledo Produce Exchange *v.* N. Y. C. R. R. Co., 515 (518, 521).

Rates on sewer pipe from Ohio points to certain eastern destinations in Wisconsin and Michigan found not to have been in violation of section 4 but unjust and unreasonable in so far as they exceeded the aggregates of proportional rates to the Lake Michigan west-bank crossings, so limited as not to apply on traffic to destinations involved, plus the local or proportional rates beyond. Williams Co. *v.* P. Co. 531 (536).

Practicability of recommendation that American lines withdraw from existing joint through rates on fruits and vegetables moving to and from Canadian points and the publication of local or proportional rates to and from the border is doubtful. Heated-Car Service Regulations, 620 (623).

JURISDICTION.

Certain provisions in the schedules for proposed increased rates for the movement of empty fish cars were nonessential to the legal establishment of a rate for their transportation. Contention that the schedules proposed are not proper tariff provisions, are not required to be published, and that the Commission had no authority to suspend them, not sustained. Express Charges on Empty Fish Cars, 24 (25, 26).

A Canadian line while engaged in through transportation subjects itself to the jurisdiction of the Commission over the joint rates in which it participates and must abide by the Commission's conclusions as to the reasonableness of such rates and the divisions thereof. Although the Commission may not require the maintenance of joint rates in the future it may determine and prescribe the divisions of rates heretofore in effect. Port Huron & Duluth S. S. Co. *v.* P. R. R. Co. 157 (159).

The Commission has no authority, in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203 (204).

Prior to movement of relaying steel rails, complainant entered into contract with dealers at Portland, Oreg., for delivery, f. o. b. that point. Dealers entered into arrangement for delivery at Portland of rails stored at Auburn, Wash., and they were so forwarded as company material. Upon arrival at Portland they were forwarded to Crisp, Simpson, and Fall City, Oreg. *Held:* Transportation beyond Portland was intrastate and beyond jurisdiction of Commission. Valley & Siletz R. R. Co. *v.* S. P. Co. 223.

On shipments of cast-iron pipe fittings from Chattanooga, Tenn., to Manila, P. I., water carrier controlled by and concurs in tariffs of S. P. Co., although not named therein. Contention that through rate was published only for convenience and was not binding. *Held:* Tariffs properly concurred in by water carrier and through transportation subject to Commission's jurisdiction. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240 (242).

On brass plated or coated iron rods from Wallingford, Conn., to Tacoma, Wash., legally applicable rate found unreasonable and reasonable rate prescribed. Director General initiated and directed establishment of a rate which exceeds the present rate, thereby fixing rate to be applied for the future. *Held:* In present state of the pleadings, rate so increased is not subject to review by the Commission. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455 (456).

JURISDICTION—Continued.

That the Commission has no power to require the carriers to furnish safe and adequate facilities for the handling of horses and mules at Nashville or prescribe their character is no longer an open question, in the light of the court's holding in *U. S.* v. *P. R. R. Co.*, 242 U. S., 208. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (552).

Arrangement regarding joint rates from Canada to points in the United States as being within control of the Canadian commission, and from domestic points to Canadian points under control of this Commission, has proved to be an efficient working arrangement. Heated-Car Service Regulations, 620 (622, 623).

Urged that the Commission has no jurisdiction to require the maintenance of through routes and joint rates between a boat line and a rail carrier. *Held:* Provisions of sections 1 and 15 apply. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (627).

Full authority and power are conferred upon the Commission by appropriate orders to give effect to its findings. Id. (628).

The Commission is empowered on its own motion, or on application of any shipper, to institute proceedings to inquire into the operation of any vessel in use by a railroad or other carrier which has not applied to the Commission to have the question of competition determined. Id. (628).

Jurisdiction is conferred upon the Commission to determine questions of fact as to the competition referred to, after full hearing, on application by any railroad company or other carrier. Id. (628).

When property is transported from point to point in the United States by rail and water, through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Commission has jurisdiction of such transportation and of the carriers, both by rail and water, which engaged in the same. Id. (628).

Jurisdiction conferred by the act of 1912, in so far as it relates to the transportation of property, is not subject to the limitation as to through routes and joint rates contained in section 15 of the general act. Id. (630).

The Commission has jurisdiction of the carriers, both by rail and by water; is empowered to establish through routes and joint rates between and over the rail-and-water lines; and is authorized to determine all the terms and conditions under which such lines shall be operated. Id. (631).

In the absence of discrimination the power to enforce the duty of furnishing cars does not reside with the Commission. In re Private Cars, 652 (671).

Contended that if the Commission has not the power to require carriers to furnish tank cars it should be given it by proper legislation, *Held:* System of use and supply of private cars that now exists can not be at once and radically changed, without serious consequences to shippers, carriers, and the public. Id. (673).

When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of the Commission's power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. Id. (677).

JURISDICTION—Continued.

The act of May 29, 1917, grants power to the Commission to fix the compensation to be paid for the use of any car not owned by the carrier. Id. (681).

Question as to the Commission's jurisdiction over respondents on the ground that in rendering private-wire service they merely lease facilities, the messages being transmitted by the lessees, *Held:* Section 1 of the act clearly states that the provisions of the act shall apply to any corporation or person so engaged. Private Wire Contracts, 731 (756, 757).

JUSTICE.

It is the Commission's function and consistent purpose to see that full justice is done between carrier and shipper wherever it be practicable to effect that end. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345 (348).

The obligation to treat each shipper fairly, no matter how small his shipments may be in comparison with those of another shipper, is one carriers can not escape. In re Private Cars, 652 (692).

LEASED CARS.

Stock cars which are leased to railroad companies under contract are really railroad cars when used by carriers and are treated as such by connections. In re Private Cars, 652 (663).

Under circumstances shown, shippers should be permitted to lease cars to transport shipments in interstate commerce from sources independent of carriers by railroad. Id. (675, 709).

Under the law as construed by the courts, car lines and others engaged in leasing cars to shippers are not common carriers and thus do not come under direct control by the Commission. Id. (677).

LEGAL RATES. *See also* CONFLICTING RATES; OVERCHARGES.

Rate on baled straw of $27 per car in effect prior to movement. Schedules seeking increase to $31 suspended. While schedules under suspension the $27 rate was canceled. Order of suspension vacated and rate of $31 then became effective. *Held:* Change was in violation of the Commission's tariff rules and of the spirit of the suspension order. Terre Haute Paper Co. *v.* St. L.-S. F. Ry. Co. 141.

On lumber from Laurel, Miss., billed to Chicago, Ill., delivery consignee's private siding Des Plains, joint rate of 26 cents in effect. Rate of 24 cents from Laurel to Chicago named in same tariff. Switching tariff named Des Plains as a Chicago rate point on traffic originating in Mississippi, and delivered by the C. & N. W. *Held:* Lower rate legally applicable. Reparation awarded. Wausau Southern Lumber Co. *v.* C. & N. W. Ry. Co. 453.

LESS-THAN-CARLOAD. *See* CARLOAD AND LESS-THAN-CARLOAD.

LEVEL OF RATES.

The level of the insterstate rates on fertilizer in the southeast is influenced by that of the intrastate rates and there are no transportation conditions justifying higher rates, distances considered, from Norfolk, Va., into North Carolina than between points in North Carolina. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

Reference to relation as between class rates, as bearing upon the situation here, is not a reliable index to the level of the rates. Western Trunk Line Potatoes, 407 (411).

LIABILITY OF CARRIER. *See* LOSS AND DAMAGE.

"LIKE KINDS OF TRAFFIC." *See also* ANALOGOUS ARTICLES, COMPARATIVE RATES.

Staves, on the one hand, and lumber, laths, shingles, timber, crossties, and box shooks, on the other, do not constitute such "like traffic" that a different charge for their transportation is violative of section 2. Moore Stave Co. *v.* S. A. L. Ry. Co. 229 (230).

Petroleum, cabbage, sirup, apricot and peach pits, as compared with nuts, do not constitute a like kind of traffic within the meaning of section 2. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (567).

Under section 2, construed. Oregon Fruit Co. *v.* S. P. Co. 719 (721).

LIMITATION OF ACTION.

Complaint filed informally January 12, 1916, and complainants advised on March 21, that claim could not be adjusted. Formal complaint received September 19, but returned for addition of participating carrier as party defendant. Amended complaint received October 10, 1916. *Held:* Complaint as originally received sufficient to stop the running of the statute. Knopke Bros. *v.* C. & A. R. R. Co. 465 (466).

Consolidated shipment belonging to complainant and a second party showed only complainant as consignee. Charges paid by third party. Second party's interest in claim made known at hearing more than two years after charges were paid is not barred by the statute to extent of his interest in the claim. Id. (466).

Following decision of Supreme Court in *Louisville Cement Co. Case*, 246 U. S., 638, in which it was held that the cause of action accrues and the statute begins to run on the date the freight charges are actually paid, original report modified and reparation awarded on certain portions of the claim previously held barred by the Commission in Unrep. A-333. Louisville Cement Co. *v.* L. & N. R. R. Co. 538.

LINE HAUL.

Somewhat higher rates for hauls over routes composed of two or more lines, not under a common management and control, than for hauls over one line or over two or more lines under a common management and control, are reasonable. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (43).

Rate on coal from points in Kentucky to complainant's yard at Ottawa, Ohio, found unreasonable to extent it exceeded the line-haul rate. Reparation awarded. Ottawa Coal & Supply Co. *v.* D., T. & I. R. R. Co. 87 (88).

To require defendant to join with the complainant company in a rail-and-water route between New York, N. Y., and points on its line, via Providence, R. I., would undoubtedly be to require it to embrace within the new route less than its entire rail line; but defendant has done this of its own accord in connection with the New England S. S. Co., which it controls through stock ownership. Through routes ordered established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (627).

LOADING.

Fertilizer: The maximum weight capacity of a standard 36-foot car is 30 tons, and it is possible to load such a car with fertilizer to its weight carrying capacity. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

Flour: Five-pound sack of flour placed in each car in order to secure benefit of transit rate. Ansted & Burk Co. *v.* C., C., C. & St. L. Ry. Co. 371 (372).

Linters, cotton: When request was made for cars for shipments of cotton linters from Freemont, N. C., to East Lyme, Conn., delivering line had an embargo on cotton linters except when loaded 65 bales to car. Complain-

LOADING—Continued.

ant loaded 50 bales to car assuring defendant that a special permit would be obtained, but as no permit was obtained shipments were forwarded to Norfolk, Va. Demurrage accruing during interim not shown unreasonable. Smith *v.* A. C. L. R. R. Co. 227.

Meats: Cars can be loaded more heavily with meats in packages than in bulk, and when in packages increase by about 8 per cent the weight on which freight is paid. Decker & Sons *v.* B. & O. R. R. Co. 47 (48).

Meats: The average car loading of fresh meats shipped to eastern territory is about 22,000 pounds, of salted meats about 31,000 pounds, and of mixed cars of salted meats and other packing-house products about 31,500 pounds. Id. (48).

Molding, metal: On a l. c. l. shipment of finished metal molding from St. Louis, Mo., to El Paso, Tex., first-class rate and 40,000-pound minimum assessed because too long to be loaded through the side door of box car. Subsequent to movement lower minimum prescribed by Commission on shipments of the kind involved. *Held:* Charges assessed not shown unreasonable. Condie-Bray Glass & Paint Co. *v.* C., R. I. & P. Ry. Co. 607.

Packing-house products: Number of cars, and average weight, of packing-house products loaded in peddler cars, by the large packers for the month of July, 1916, shown. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612 (615).

Peddler cars: There can be no question but that peddler cars with a light loading tend to inefficiency in the transportation system. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612 (619).

Sisal: Approximately 70 bales, weighing 370 pounds each, can be loaded in a 40-foot car. Sisal from New Orleans, La. 13 (15).

LOADING AND UNLOADING.

Contention that the line-haul rates were sufficiently high to include allowances for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York. *Held:* Shipments came within the exception "in bulk" and failure to make an allowance not found unlawful or unreasonable. Swift & Co. *v.* B. & O. R. R. Co. 103.

Fresh meat is rarely, if ever, shipped in such a way that it could be scooped, shoveled, or poured. Id. (104).

Statement that "The burden is on complainant to prove that it was possible by the exercise of ordinary diligence for the defendant to have unloaded car before it was actually unloaded," *Held:* Such a burden not imposed. Youngblood, Inc., *v.* C. R. R. Co. of N. J. 217 (220).

LOCATION.

While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which rates are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co. 610 (611, 612).

LONG AND SHORT HAUL.

In general:

In the absence of proof of damages to the shipper, the fact that carriers have charged or received rates which violate the long-and-short-haul rule of the fourth section of the act is not of itself a sufficient basis for an award of reparation. Oregon Fruit Co. *v.* S. P. Co. 719 (722).

LONG AND SHORT HAUL—Continued.

Cartersville, Ga.: Authority to continue rates on barytes from Cartersville, Ga., to Hazard, Pa., lower than the rates on like traffic from or to intermediate points, denied. New Jersey Zinc Co. *v.* B. & O. R. R. Co. 429 (431).

Cincinnati, Lockland, and Hamilton, Ohio: Authority to continue rates on mixed carloads of rails and fastenings from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., lower than the rates on like traffic from or to intermediate points, denied. Southern Engineering & Construction Co. *v.* St. L.-S. F. Ry. Co. 95 (97).

Detroit and Jackson, Mich.: Authority to continue lower rates on petroleum and products, from Lawrenceville and Allenville, Ill., to State Fair, Dearborn, Leoni, Detroit, West Detroit, and Jackson, Mich., than to intermediate points granted in part. Indian Refining Co. *v.* B. & O. R. R. Co. 249 (252).

Iowa points: Authority to maintain rates on potatoes from points in Minnesota and North Dakota to Council Bluffs, Iowa, St. Joseph, and Kansas City, Mo., and Nebraska City, Nebr., lower than to intermediate points, denied. Western Trunk Line Potatoes, 407 (415).

Johnson City, Tenn.: Contention that rates on maple lumber and maple flooring from Elizabethton and Roan Mountain, Tenn., to certain points in Georgia, Florida, and South Carolina, are unreasonable inasmuch as component beyond Johnson City, Tenn., exceeded rates in effect from Bristol, to which point Johnson City is intermediate, not sustained. Fourth section relief denied. Elizabethton Flooring Co. *v.* E. T. & W. N. C. R. R. Co. 137.

Las Cruces, N. Mex.: Rates on wheat from Colorado, Kansas, Oklahoma, Nebraska, Illinois, Missouri, and northern Texas to Las Cruces, N. Mex., not shown unreasonable or unduly prejudicial to Las Cruces as compared with lower intrastate rates to El Paso, Tex., to which Las Cruces is intermediate. Fourth section relief denied. Mesilla Valley Produce Exchange *v.* A., T. & S. F. Ry. Co. 483.

Maysville, Ky.: Combination rate on oak lumber from Clearfield, Ky., to New Kensington, Pa., found to have been illegal to extent that the factor of the rate between Morehead and Maysville exceeded the charges to Cincinnati, Ohio, to which Maysville is intermediate. Reparation awarded. Clearfield Lumber Co. *v.* C. & O. Ry. Co. 93.

North Tonawanda, N. Y.: Sixth-class rate assessed on wrapping paper from Fort Edward, N. Y., to North Tonawanda, N. Y., via Sayre, Pa., not shown unreasonable as compared with lower rate via a shorter intrastate route to Niagara Falls, N. Y., a farther distant point. International Paper Co. *v.* D. & H. Co. 75.

Oelwein, Iowa: Rates on grapefruit and oranges from Mims and Astatula, Fla., to Oelwein, Iowa, found unreasonable to extent that components from Jacksonville to Oelwein exceeded 66 cents per box on shipments from Mims, and joint commodity rate to Minneapolis, Minn., on the shipments from Astatula. Fourth section relief denied. Gamble Robinson Fruit Co. *v.* F. E. C. Ry. Co. 301.

Omaha, Nebr.: Rates on crackers, cookies, and wafers, l. c. l., from Omaha, Nebr., to certain points in Kansas, and on empty cracker cans, l. c. l., returned to Omaha from the same Kansas points, found violative of section 4 to extent they exceeded rates from and to Neoga, Chautauqua, and other points in western Iowa east of Omaha. Following *Oregon Fruit Company Case*, 50 I. C. C., 719, reparation denied. Iten Biscuit Co. *v.* C., B. & Q. R. R. Co. 724.

LONG AND SHORT HAUL—Continued.

Peoria and Pekin, Ill.: Relation between present rates from points from which through rates are not published available for movement of grain from Illinois points via Peoria to eastern trunk line territory and through rates from intermediate points is violative of the fourth section by reason of the fact that such rates are lower from more distant than from intermediate points. Grain Reshipped from Peoria, 185 (190-A).

Petersburg, Va.: Authority to continue rates on petroleum and products from Baltimore, Md., to Richmond and Petersburg, Va., lower than rates on like traffic from and to intermediate points denied. Richmond Oil Co. Inc. *v.* A. C. L. R. R. Co. 213 (215, 216).

Petersburg, Va.: No competition between Baltimore, Md., and Petersburg, Va., by water, therefor apparently no reason why rates on petroleum and products should not conform to the fourth section the same as the more direct all-rail routes through Potomac Yard. Fourth section relief denied. Id. (216).

St. Paul and Minneapolis, Minn.: Authority to continue rates on coal from Manitowoc, Wis., to St. Paul and Minneapolis, Minn., lower than the rates on like traffic from or to intermediate points denied. Northwestern Traffic & Service Bureau *v.* M., St. P. & S. Ste. M. Ry. Co. 575 (577).

Salem and Medford, Oreg.: Rates on watermelons from Sultana and Monson, Cal., to Salem and Medford, Oreg., found violative of section 4 of the act inasmuch as they exceeded the rate in effect to Portland, Oreg. Reparation denied. Oregon Fruit Co. *v.* S. P. Co. 719 (721, 722).

Trenton, Ga.: Authority to continue rates on fertilizer from Mount Pleasant, Tenn., to Sulphur Springs, Ga., lower than rates from said point of origin to Trenton, Ga., Battelle, Ala., and other intermediate points, denied. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (256).

Watervliet, Mich.: Rate on cast-iron pipe from North Birmingham, Ala., to Watervliet, Mich., found unreasonable to extent it exceeded lower rate to farther distant points. Rate prescribed and reparation awarded. Fourth section relief denied. American Cast Iron Pipe Co. *v.* L. & N. R. R. Co. 168.

Yenome and Seigling, S. C.: Rates on logs from stations between Yenome and Seigling, which are intermediate Barnwell to Savannah, are higher than from Barnwell. *Held:* Adjustment created without authority from the Commission and is unlawful. Pierpont Mfg. Co. *v.* S. Ry. Co. 81 (82).

LOSS AND DAMAGE.

Proposed tariff amendment to relieve respondents of liability for loss or damage of perishable commodities, when requested by shipper and charged for in addition to the rate, from the United States to Canada, found unlawful, but as to traffic from Canada to the United States, proposed rule left with the Canadian Commission for determination. Heated-Car Service Regulations, 620.

While retaining for the carrier the present extra charge for heating service, on traffic moving from domestic points to interior Canadian points, tariff amendment proposes to relieve the carriers from all liability for loss or damage, although the extra charge is intended to compensate it for the element of risk involved. *Held:* Such a rule regarded as hostile to the Cummins amendment. Id. (624).

LOW RATES.

Reshipping rates on grain from Peoria and Pekin, Ill., to eastern trunk line territory are unreasonably low for application via the routes afforded by the Illinois Central Railroad. Grain Reshipped from Peoria, 185 (196-A).

MAP.

Of originating territory of potato shipments in Minnesota, Michigan, Wisconsin, North Dakota, and South Dakota. Western Trunk Line Potatoes, 407 (following page 415.)

All-rail and water-and-rail routes from points on the eastern shore of Virginia, and near-by points, to Baltimore, Md., and Wilmington, Del. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (438).

Approximate outlines of the Pennsylvania clay groups and their geographical relation to each other. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457 (469).

Routes of the N. Y., N. H. & H. R. R. in connection with lines of the New England Steamship Company. Steamer Lines on Long Island Sound, 634 (facing page 640).

MARKET COMPETITION. *See* COMPETITION (MARKET).

MARKETS.

Rates on anthracite and bituminous coal and on coke from Duluth, Minn., to Sioux Falls, S. Dak., not shown unjust or unreasonable inasmuch as the system of equalizing rates from different lake ports and mines gives complainant competing markets in which to purchase its coal. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co. 610.

MASTER CAR BUILDERS' RULES.

No reason why proper modification of, can not be made, if the present rules governing the reconsignments of shipments need modification in order to remove any injustice to terminal companies. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. L. 474 (476).

With respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made should be adopted. In re Private Cars, 652 (707, 710).

MAXIMUM WEIGHT.

The maximum weight capacity of a standard 36-foot car is 30 tons, and it is possible to load such a car with fertilizer to its weight carrying capacity. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

MEASURE OF RATES.

The compensation received for the movement of loaded and empty fish cars, as compared with the revenues derived from other equipment, is clearly not a proper measure of the rate on empty fish cars. Express Charges on Empty Fish Cars, 24.

One means of testing the reasonableness of rates is to compare them with rates on the same or similar commodities in the same territory and under circumstances and conditions that are substantially similar. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (42).

The Commission has repeatedly held that where a comparison with a group rate is made the average distance from the points of origin to the various points in the group should be taken. West Virginia Rail Co. *v.* P. R. R. Co. 304 (306).

With substantially similar transportation conditions affecting rates in opposite directions between the same points, there should be no material disparity in rates, but it is clear that a rate, established under particular

MEASURE OF RATES—Continued.

competitive conditions, is not in itself a fair measure of the rate in the opposite direction. West Virginia Rail Co. *v.* B. & O. R. R. Co. 319 (322).

MESSAGES. *See also* PRIVATE WIRE CONTRACTS.

Message-and-answer speed between New York and Chicago, and between New York and San Francisco, shown. Private Wire Contracts, 781 (741).

MILEAGE.

Loaded mileage of all freight cars is about 15 per cent greater than that of private cars. In re Private Cars, 652 (667).

Per cent of loaded mileage of refrigerator cars operated by railroad-owned car lines on the rails of the owning railroad with that of refrigerator-car lines operated by shippers, shown. Id. (667).

Statement showing refrigerator and tank car mileage as reported by carriers and by private owners, loaded, and empty, years 1913 to 1917, inclusive. Id. (669).

Table showing mileage received by refrigerator, tank, and other private car owners for year 1912, and from January 1, 1913, to January 1, 1918, together with a comparison of the total of repairs and depreciation. Id. (711).

MILEAGE RATES. *See* DISTANCE RATES.

MILLING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (MILLING).

MINIMUM RATE.

The Commission can not prescribe a minimum rate. Private Wire Contract, 781 (761).

MINIMUM WEIGHT.

In general:

The required minimum carload weight is necessarily a part of the rate. It determines the minimum carload charge and enters directly into the determination of whether or not that charge is reasonable. Royster Guano Co. *v.* A. C. L. R. R. Co., 34 (41).

Flour: Minimum of 40,000 pounds on flour from the Missouri River and points in Kansas to destinations in Mississippi Valley territory found unduly prejudicial to complainants and unduly preferential of their competitors located at points in Illinois, from which a minimum of 30,000 pounds applies to the same destinations. Kansas City Millers' Club *v.* A., T. & S. F. Ry. Co., 170 (182).

Flour: The 40,000-pound carload minimum on flour from the Missouri River and points in Kansas, Nebraska, Oklahoma, Iowa, and Missouri to destinations in southeastern and Carolina territories not found to be unduly prejudicial. Id. (183).

Molding: On a l. c. l. shipment of finished metal molding from St. Louis, Mo., to El Paso, Tex., first-class rate and 40,000-pound minimum assessed because too long to be loaded through the side door of box car. Subsequent to movement lower minimum prescribed by Commission on shipments of the kind involved. *Held:* Charges assessed not shown unreasonable. Condie-Bray Glass & Paint Co. *v.* C., R. I. & P. Ry. Co., 607.

Packing-house products: Charges on l. c. l. shipments of packing-house products, fresh meats, and other commodities, in peddler cars, from Chicago, Ill., to points in Illinois and Indiana, found unreasonable to extent they exceeded a subsequently established minimum revenue for each peddler car, equivalent to the charges on 20,000 pounds at the carload dressed beef rate from point of origin to the farthermost destination. Reparation awarded. Swift & Co. *v.* C., C., C. & St. L. Ry. Co., 211.

MINIMUM WEIGHT—Continued.

State and interstate: Maintenance of higher interstate minimum on flour between points in Kansas, Nebraska, Oklahoma, Texas, Arkansas, Missouri, and Iowa than the minima maintained and applied to intrastate transportation of flour within those states found unduly prejudicial to complainants and to interstate commerce. Kansas City Millers' Club *v.* A., T. & S. F. Ry. Co., 170 (182).

State and interstate: Holding in *Houston & Texas Ry.* v. *U. S.*, 234 U. S., 342, that it is within the Commission's power and its duty to remove all unjust discriminations against interstate traffic caused by state rates, applied also for the removal of unjust discrimination brought about by different carload minima. Id. (182).

MISROUTING.

On shipments of lumber from Bogalusa, La., to Indianapolis, Ind., there made into creosoted paving blocks and reshipped to Chicago, Ill., local rate of 9 cents from Indianapolis to Chicago assessed. Lower rate applied via Jackson, Miss. *Held:* Route specified by shipper was complete and initial carrier should have delivered shipments at Jackson, the point of direct connection. Republic Creosoting Co. *v.* N. O. G. N. R. R. Co. 201.

On lumber from Andrews, N. C., to New York, N. Y., embargo in effect when shipment originated and specified routing could not be followed. Complainant authorized delivery by any available route and shipment forwarded via route taking higher rate. *Held:* Shipment found misrouted in that agent should not have executed bill of lading without first advising of embargo and obtaining further routing instructions. Reparation awarded. Graham County Lumber Co. *v.* S. Ry. Co. 231.

Reparation awarded account of misrouting less-than-carload shipment of pants from Asbury Park, N. J., to Green Bay, Wis., in that initial carrier failed to ship via cheapest available route. Green Bay Specialty Co. *v.* N. Y. & L. B. R. R. Co. 237.

Carloads of fertilizer from Mount Pleasant, Tenn., to Heucks, Miss., found misrouted as a lower rate applied via another route. Reparation awarded. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (255).

On lumber from Midland City, Ala., to Bradley, Ill., routing instructions specified P. R. R. to receive line haul but named no junction point. Forwarded via route carrying combination rate higher than via other routes over which there was a lower joint rate. *Held:* Shipment not misrouted. Southern Pine Lumber Co. *v.* A. C. L. R. R. Co. 423.

On a carload of potatoes from Pardeeville, Wis., to Marion, N. C., routing instructions inserted in bill of lading but no rate or junction point named. Routing instructions followed and shipment forwarded via route carrying combination rate higher than via another route over which lower combination rate applied. *Held:* Shipment not misrouted. Refund directed. Murphey Co. *v.* C., M. & St. P. Ry. Co. 427.

On a carload of lumber from Hickory, N. C., to South Fort Plain, N. Y., bill of lading specified "W. S. delivery, Fort Plain." Fort Plain is located on the N. Y. C. while South Fort Plain is located on the West Shore. Inasmuch as West Shore delivery to Fort Plain was impossible, carrier's agent at Hickory should have noticed error in bill of lading. *Held:* Following Conference Ruling 474 (c), shipment misrouted. Hutton & Bourbonnais Co. *v.* S. Ry. Co. 434.

MISROUTING—Continued.

On yellow-pine lumber from Epley, Miss., to Lattimer Mines, Pa., charges exceeded combination rate legally applicable via route of movement, but shipment could have moved to destination via route taking lower rate. *Held:* Shipment misrouted by initial carrier. Reparation awarded. Chicago Lumber & Coal Co. *v.* A. G. S. R. R. Co. 481.

MISTAKE. *See* ERROR.

MIXED CARLOADS.

Charges legally applicable on rails and angle bars, from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., found unreasonable to extent they exceeded rate subsequently established. Reparation awarded. Southern Engineering & Construction Co. *v.* St. L.-S. F. Ry. Co. 95.

Charges on l. c. l. shipments of packing-house products, fresh meats, and other commodities, in peddler cars from Chicago, Ill., to points in Illinois and Indiana, found unreasonable to extent they exceeded a subsequently established minimum revenue for each peddler car, equivalent to the charges on 20,000 pounds at the carload dressed beef rate from point of origin to the farthermost destination. Reparation awarded. Swift & Co. *v.* C., C., C. & St. L. Ry. Co. 211.

On wheat from western points to New York, N. Y., for export, intention was to mill into flour at Springfield, but due to demand of wheat for export, shipment was stored at Springfield and subsequently reshipped. In order to comply with transit arrangements and to get through export rate, complainant placed a 5-pound sack of flour in each car. *Held:* Transit rules did not apply and combination rates found unreasonable to extent they exceeded joint through export, or reshipping rates, plus transit charge. Reparation awarded. Ansted & Burk Co. *v.* C., C., C. & St. L. Ry. Co. 371 (372).

To rate nails, when constituting part of, and shipped in mixed carloads with oil-well outfits and supplies, with weight not exceeding 500 pounds, higher than rate on mixed carloads of oil-well outfits and supplies, found unreasonable. Parkersburg Rig & Reel Co. *v.* A., T. & S. F. Ry. Co. 416.

MIXED SHIPMENTS.

On l. c. l. shipments of lamp standards and shades, constituting a complete article, from Portland, Oreg., to Spokane, Wash., double first-class rates applicable to art glass lamp shades, assessed, found illegal to extent they exceeded rating of first class applicable to lamps and fixtures, n. o. i. b. n. Reparation awarded. Seller & Co. *v.* S., P. & S. Ry. Co. 419.

Rules governing mixtures of shipments and follow lots should not be different when the traffic is transported in privately owned than in railroad-owned cars. In re Private Cars, 652 (707).

No finding made as rules governing mixtures of shipments and follow lots in official classification territory as that matter is under consideration of a special committee of experts with a view to suggesting and having adopted rules applicable throughout the entire country. Id. (708).

MONTHLY REPORTS.

Respondents referred to their monthly reports for a demonstration of their revenue needs, but on their face these reports do not justify increases in some rates, and not in others, or a disturbance of existing relations. Western Trunk Line Potatoes, 407 (413).

MORSE PRIVATE-WIRE SERVICE. *See* PRIVATE-WIRE SERVICE.

NAME.

On two carloads of lumber billed from Potlatch, Idaho, to Victoria, Ill., C., P. & St. L. Ry. delivery, that station abandoned but was still carried in

NAME—Continued.

tariff. Victoria, Knox County, Ill., intended. Shipments forwarded to intended destination, one via a circuitous route. *Held:* Initial carrier accepted shipments under bills of lading impossible of execution, and failure to send both over a direct route found to result in damages. Reparation awarded. Potlatch Lumber Co. *v.* W., I. & M. Ry. Co., 277.

NOTATIONS AND SYMBOLS.

The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignments bore symbols denoting both increase and reduction, did not affect the validity or applicability of the item, as it was allowed to become effective in each instance. New Era Milling Co. *v.* St. L. & S. F. R. R. Co. 207 (210).

OPPOSITE DIRECTION. *See* BOTH DIRECTIONS.

OVERCHARGES.

On cast-iron pipe fittings from Chattanooga, Tenn., to Manila, P. I., via San Francisco, Cal., S. P. agent at St. Louis named rate of $13 per net ton. Cars loaded and tendered initial carrier who refused to issue bills of lading naming $13 rate and shipments moved at rate of $16, subsequently established. *Held:* Rate of $13 found legally applicable and reparation awarded. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240.

On paper-box board, from Bellows Falls, Vt., to Brightwood, and other points in Massachusetts and Maine, class rates assessed. Lower l. c. l. commodity rates on cardboard legally applicable. *Held:* Legally applicable rates not shown unreasonable, but shipments to points in Massachusetts and Maine to which commodity rates were in effect found overcharged. International Paper Co. *v.* B. & M. R. R. 341.

Rate of $1.25 charged on two carloads of rough castings, Berea, Ohio, to Portland, Oreg. Legally applicable rate was 80 cents. *Held:* Shipments overcharged and reparation awarded. Dunham Co. *v.* N. Y. C. R. R. Co. 343.

On l. c. l. shipments of lamp standards and shades, constituting a complete article, from Portland, Oreg., to Spokane, Wash., double first-class rates applicable to art glass lamp shades assessed. First-class rating on lamps and lamp fixtures, n. o. i. b. n., legally applicable. *Held:* Shipments overcharged and reparation awarded. Seller & Co. *v.* S., P. & S. Ry. Co. 419.

PACKING. *See also* CONTAINERS.

On salted hog meats from Mason City, Iowa, to eastern destinations, proportional rates east and west of the Mississippi River apply. Tariffs applicable east of the Mississippi provide specific rates when shipped in bulk, but not in packages. Proposed rates in packages higher than in bulk, found unreasonable. Decker & Sons *v.* B. & O. R. R. Co. 47.

PANAMA CANAL ACT.

When property is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single state, the Commission has jurisdiction of such transportation and of the carriers, both by rail and water, which engaged in the same. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (628).

Manifestly the purpose of the new legislation was to cover the entire subject of the regulation and control of interstate transportation over a rail line and a water carrier, at least as to their traffic, and to confer

PANAMA CANAL ACT—Continued.

upon the Commission jurisdiction of such transportation without limitation, except as prescribed in the act itself. Id. (629).

To apply the limitation of section 15 to cases which involve questions as to the propriety and feasibility of through routes and joint rates between and over rail-and-water lines would be inconsistent with the comprehensive and all-embracing authority plainly intended to be accorded by the Panama Canal act. Id. (630).

Word "property" of that part of section 6, as amended by the Panama Canal act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates between rail and water carriers. Id. (631, 632).

Petition of the N. Y., N. H. & H. R. R. Co. pursuant to section 5 of the act as amended by the Panama Canal act for permission to continue operation of the lines of the New England Steamship Company on Long Island Sound, granted. Steamer Lines on Long Island Sound, 634 (646).

PAPER RATES.

Proposed increase in rates which are merely "paper" rates, found justified. Sisal from New Orleans, La. 13 (17).

PARTIES.

Carrier that performs a switching service, the entire charge for which is absorbed by the line-haul carrier, is not a necessary party to a proceeding involving the reasonableness of the rate under which the absorption is made. Finding in *Du Pont de Nemours Powder Co. Case*, 43 I. C. C., 227, reversed. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203.

Consolidated shipment belonging to complainant and a second party showed only complainant as consignee. Charges paid by third party. Second party's interest in claim made known at hearing more than two years after charges were paid is not barred by the statute to extent of his interest in the claim. Knopke Brothers *v.* C. & A. R. R. Co. 465 (466).

On peaches from Ridge Springs, S. C., to Philadelphia, Pa., billed "subject to correction" after consignee paid the freight charges, and acting as agent for consignor, sold shipments and remitted proceeds less commission and freight to consignor, defendants presented revised bill of lading naming correct rate and undercharges. *Held:* Undercharges due from party legally responsible but issue as to party legally liable, not within the Commission's jurisdiction. Wilson *v.* P. R. R. Co. 571.

PARTS.

To rate nails, when constituting part of, and shipped in mixed carloads with oil-well outfits and supplies, with weight not exceeding 500 pounds, higher than rate on mixed carloads of oil-well outfits and supplies, found unreasonable. Parkersburg Rig & Reel Co. *v.* A., T. & S. F. Ry. Co. 416.

On l. c. l. shipments of lamp standards and shades, constituting a complete article, from Portland, Oreg., to Spokane, Wash., double first-class rates applicable to art glass lamp shades assessed, found illegal to extent they exceeded rating of first class applicable to lamps and fixtures, n. o. i. b. n. Reparation awarded. Seller & Co. *v.* S., P. & S. Ry. Co. 419.

PASSENGER FARES.

Maintaining commutation and special fares for school children between Providence, R. I., and Bristol, R. I., lower than zone fares between Providence, R. I., and Touisset, South Swansea, and Fall River, Mass., not shown unreasonable but found unduly prejudicial to points and passengers on the Fall River branch and preferential of points and passengers on the Bristol branch. Gersch *v.* N. Y., N. H. & H. R. R. Co. 486.

PASSENGER FARES—Continued.

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with complainant found to result in undue prejudice. Joint fares no higher than maintained by N. E. S. S. Co., required established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633)

PEDDLER CARS.

Charges on l. c. l. shipments of packing-house products, fresh meats, and other commodities, in peddler cars, from Chicago, Ill., to points in Illinois and Indiana, found unreasonable to extent they exceeded a subsequently established minimum revenue for each peddler car, equivalent to the charges on 20,000 pounds at the carload dressed beef rate from point of origin to the farthermost destination. Reparation awarded. Swift & Co. *v.* C., C., C. & St. L. Ry. Co. 211.

Charges and tariff rules governing the movement of peddler cars from Cleveland, Ohio, to points in C. F. A. and trunk-line territories found unreasonable to extent they exceed charges based on third-class rate from point of origin to final destination, minimum 12,000 pounds, and unduly prejudicial to Cleveland as compared with rules from Buffalo, N. Y. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612.

Number of cars, and average weight, of packing-house products, loaded in peddler cars by the large packers for the month of July, 1916, shown. Id. (615).

Rules of carriers in various territories, in regard to, compared. Id. (616).

Peddler cars, as a rule, are accorded somewhat greater expedition than the ordinary merchandise car. Id. (618).

There can be no question but that peddler cars with a light loading tends to inefficiency in the transportation system. Id. (618).

PERCENTAGE RATES.

Complaint seeking the establishment of lower ex lake rates and ex rail reshipping rates on grain and products from Toledo, Ohio, to points in eastern trunk-line territory on the basis of 78 per cent of the ex lake and ex rail rates from Chicago to New York, and the establishment of joint rates on grain from Missouri River cities to Toledo, found not sustained. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

PHYSICAL CONNECTION.

In the nature of things there could be no actual physical connection between a boat line and a rail carrier. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (626).

PLANT FACILITY.

Mere fact that the Lake Terminal Railroad Company is incorporated under the general railroad law of Ohio, without regard to its real purpose and actual relation to the tube company, seems to be no substantial basis for its claim to the status of a common carrier. *Held:* A plant facility. National Tube Co. *v.* B. & O. R. R. Co. 489 (495).

A plant facility under section 15 may have an allowance out of a carrier's line-haul rate when performing a service of carriage for it. Id. (495).

PLEADING AND PRACTICE.

A complainant before the Commission can not, as a matter of right, withdraw his complaint and the undesirable consequences of permitting a complainant to terminate a proceeding whenever in his opinion his interests would thus be better served than by having it proceed to a conclusion, are obvious and require no exposition. Royster Guano Co. *v.* A. C. L. R. R. Co., 34 (40).

PLEADING AND PRACTICE—Continued.

If an unlawful rate or practice exists, it is immaterial by whom or how the irregularity is discovered or through what channels the matter is brought to the attention of the Commission, as each case must be submitted and dealt with on the pertinent facts of record. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (258).

Rules governing the relations between common carriers can not be pleaded as justification for unreasonable or prejudicial rates or practices. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. L. 474 (476).

POLICING.

The duty of the inspection bureau to police transit arises primarily from the obligation of the carriers to collect the legally published charges and not from any legal obligation to the shipper. Forked Deer Milling Co. *v.* I. C. R. R. Co. 573 (574).

It is the duty of shippers to aid the carriers in their effort properly and effectually to police transit service. Id. (574).

POSTING TARIFFS. *See* TARIFFS.

POTENTIAL COMPETITION. *See* COMPETITION (POTENTIAL).

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES.

In general:

Order requiring the removal of unjust discrimination or undue preference is in the alternative, and in the case of rates may be complied with by reducing the higher to the level of the lower, by increasing the lower to the level of the higher, or by placing both upon some other common level. Private Wire Contracts, 731 (761).

What is undue or unreasonable preference or advantage is a question of fact. Id. (761).

Articles:

Chairs: Third-class ratings applicable to furniture, applied by defendants on pad, slip, and spring seat chairs and rockers in western classification territory found legally applicable and second-class rating on reed chairs and rockers in straight carloads, and third-class when mixed with other chairs not shown unreasonable or unduly prejudicial as compared with third-class rating on fiber chairs. Murphy Chair Co. *v.* W. Ry. Co. 728.

Lamps and shades: Western classification rating of double first-class on art glass lamp shades, and on l. c. l. shipments of electric lamps, n. o. i. b. n., packed in barrels or boxes, found justified and not shown unreasonable or prejudicial as compared with rating on lamp globes or shades, coppered, leaded or framed glass, and oil lamps. Seller & Co., *v.* S., P. & S. Ry. Co. 419 (421, 422).

Macaroni products: Class rates on macaroni products, c. l. and l. c. l. between points in official, western, and southern classification territories, not shown unreasonable or unduly prejudicial as compared with the commodity rates on cereal products. Rates cited in comparison do not warrant disturbing the present adjustment. Macaroni & Noodle Mfrs. *v.* A. G. S. R. R. Co. 289.

Nails: Rates on nails, in mixed carloads with oil-well outfits, from Parkersburg, W. Va., and St. Louis, Mo., to certain points in Kansas, Wyoming, Oklahoma, Texas, and Louisiana, not shown unreasonable or prejudicial, as compared with rates on nails shipped in connection with other commodities. Reparation denied. Parkersburg Rig & Reel Co. *v.* A., T. & S. F. Ry. Co. 416.

PREFERENCES AND PREJUDICES—Continued.

Articles—Continued.

Nuts: Contended that defendants equalize commercial and market conditions on other commodities, but not on nuts, thereby subjecting nuts as a particular kind of traffic to undue prejudice, *Held:* Only basis for this contention is the fact that the rates on the other commodities are lower. California Walnut Growers Asso. *v.* A. & R. R. R. Co. 558 (567).

Staves: Rate on staves from Savannah, Ga., to New York, N. Y., not shown to be discriminatory or prejudicial as compared with rates on lumber, laths, shingles, timber, crossties, and box shooks Moore Stave Co. *v.* S. A. L. Ry. Co. 229.

Boat line:

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with the complainant, found to result in undue prejudice. Joint fares no higher than maintained by the N. E. S. S. Co. required established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R R. Co. 625 (633).

Localities:

Atlanta, Ga.: Allegation that rates on green coffee from New Orleans, La., to Atlanta, Ga., higher than rates to Nashville and Birmingham results in undue prejudice to Atlanta. *Held:* Commission of the opinion that rates to Atlanta should not exceed rates to Birmingham and Nashville by more than 7 cents, but no finding made in view of Director General's Order No. 28. Atlanta Freight Bureau *v.* L. & N. R. R. Co. 397 (402).

Batesville, Ark.: Commodity rate on excelsior from Batesville, Ark., to El Paso, Tex., not found unreasonable or prejudicial to Batesville in favor of Chicago, Ill., and Dubuque, Iowa, in that the rates from these and other points to El Paso, distances considered, compare favorably. Batesville Excelsior Co. *v.* M. P. R. R. Co. 235.

Brookville, Pa.: Rates on clay hollow building blocks, from Brookville, Pa., to Atlantic seaboard cities and points taking same rates, found justified but unduly prejudicial to extent they exceed the rates from certain other points in the same clay zone to the same destinations. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457.

Cleveland, Ohio: Charges and tariff rules governing the movement of peddler cars from Cleveland, Ohio, to points in C. F. A. and trunk-line territories found unreasonable to extent they exceed charges based on third-class rate from point of origin to final destination, minimum 12,000 pounds, and unduly prejudicial to Cleveland as compared with rules from Buffalo, N. Y. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612.

Dallas-Fort Worth group: Following *Dallas Chamber of Commerce Case*, 40 I. C. C., 619, commodity rate on potatoes from Minnesota and Wisconsin producing points to the Dallas-Fort Worth group in Texas found unreasonable to extent it exceeded 65 cents; same rate to the rest of Texas common-point territory not shown unreasonable or prejudicial. Reparation awarded. Northern Potato Traffic Asso. *v.* A., T. & S. F. Ry. Co. 528.

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
Diamond, Pa.: On coal from mines in Pennsylvania to "short-haul territory" the rate adjustment shown to be unduly preferential of Alicia, Bridgeport, Pike, and Braznell, Pa., and unduly prejudicial of Diamond, Pa. Rates from Diamond should not be higher than from the other mines here mentioned. Discrimination ordered removed. Diamond Coal & Coke Co. *v.* P. R. R. Co. 144.
Great Falls, Mont.: Maintenance by defendant of higher rate on heavy oils from Cowley and Greybull, Wyo., to Great Falls, Mont., in connection with the Great Northern, than it maintains on like traffic from the same points to Helena and Butte in connection with the N. P. and the B., A. & P. to Anaconda, subjects Great Falls to undue prejudice. Great Falls Gas Co. *v.* C., B. & Q. R. R. Co. 357.
Hattiesburg and Meridian, Miss.: Rates on sulphur from Sulphur Mines, La., and Bryan Mound, Tex., to Hattiesburg and Meridian, Miss., not found unreasonable or unduly prejudicial as compared with rates to more distant points; but rates to Meridian found improper, in that they exceed by 15 cents the combination on New Orleans. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379.
Huntington, W. Va.: Rate on steel rails from Huntington, W. Va., to Cleveland, Ohio, not found to be unreasonable or unduly prejudicial of Newark, Ohio, Buffalo, N. Y., Cumberland, Md., or Johnstown and Pittsburgh, Pa., in that the rates, distances, and ton-mile earnings compare favorably. West Virginia Rail Co. *v.* C. & O. Ry. Co. 69.
Huntington, W. Va.: Export rates on light steel rails from Huntington, W. Va., to Atlantic ports, during period in question, were unduly prejudicial to extent that the Huntington-New York rate exceeded 77/60ths of the export rate in effect from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, under the rate to New York. Reparation awarded. West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (115).
Huntington, W. Va.: Rate on iron and steel rails from Sparrows Point, Md., to Huntington, W. Va., found justified and not shown to be prejudicial to Huntington as compared with rates to Newark and Lorain, Ohio, Pittsburgh, Pa., and between other points in C. F. A. territory. West Virginia Rail Co. *v.* P. R. R. Co. 304.
Huntington, W. Va.: Combination rate on iron and steel rails from Huntington, W. Va., to Birmingham, Ala., based upon a differential over Cincinnati, Ohio, found unreasonable and unduly prejudicial as compared with rates to Birmingham from other points north of the Ohio River. Reasonable rate prescribed and reparation awarded. West Virginia Rail Co. *v.* B. & O. R. R. Co. 319.
Idaho points: Combination rates for transportation of pine and fir lumber from Harrison, Springston, and Rose Lake, Idaho, to points local to the line of the N. P. Ry. Co., east of Billings, Mont., in the states of Montana, North Dakota, and Minnesota, found unduly prejudicial in favor of the Spokane, Wash., lumber group. Springston Lumber Co. *v.* N. P. Ry. Co. 591 (595).
Johnson City, Tenn.: In original report 46 I. C. C., 527, rates from Cincinati, or through Cincinnati from beyond, by way of Speers Ferry to Johnson City, Tenn., found prejudicial to Johnson City and preferential of Bristol, Tenn.-Va. Carriers undertook to remove discrimi-

PREFERENCES AND PREJUDICES—Continued.
Localities—Continued.
nation by increasing Bristol rates. Upon rehearing, finding in original report adhered to and removal of discrimination ordered. Chamber of Commerce of Johnson City, Tenn., *v.* S. Ry. Co. 605.
Lancaster, Mineral Point, and Platteville, Wis.: Rate on petroleum and products from Reno, Pa., to, not found unduly prejudicial compared with rates to Galena, Warren, Freeport, and Rock Island, Ill., Monroe, Madison, and Dubuque, Iowa. Empire Oil Works *v.* N. Y. C. R. R. Co. 99 (100, 103).
Las Cruces, N. M.: Rates on wheat from certain points in Colorado, Kansas, Oklahoma, Nebraska, Illinois, Missouri, and northern Texas, to Las Cruces, New Mexico, not shown unreasonable or unduly prejudicial to Las Cruces, as compared with lower intrastate rates to El Paso, Texas, to which Las Cruces is intermediate. Mesilla Valley Produce Exchange *v.* A., T. & S. F. Ry. Co. 483.
Lincoln, Nebr.: Contention that present potato rates to Lincoln, Nebr., from Minnesota, North Dakota, and South Dakota are unreasonable to extent they exceed rates to Omaha, Nebr. *Held:* Existing relationship as between Lincoln and Omaha not shown unreasonable or prejudicial. Western Trunk Line Potatoes, 407 (413).
Moorhead and Breckenridge, Minn.: Rates on beer from La Crosse, Wis., to Moorhead and Breckenridge, Minn., found unduly prejudicial compared with rates on the same commodity from Chicago, Ill., and Milwaukee, Wis. Proper relationship prescribed. Heileman Brewing Co. *v.* C., B. & Q. R. R. Co. 273 (276).
Muscatine, Iowa: Rates on coal from mines in Illinois to Muscatine, Iowa, not shown to be unduly prejudicial to Muscatine, compared with rates to Davenport, Clinton, and Burlington, Iowa. Block Co. *v.* A., T. & S. F. Ry. Co. 469 (471, 473).
New Orleans, La.: Joint class D rate on staves and other forest products from Etolle, Tex., and other points on the A. & N. R. R. R. to New Orleans, La., not found preferential of Galveston, Tex., but found unlawful and unreasonable to extent it exceeded the aggregate of the intermediate rates to and from Lufkin, Tex. Reparation awarded. Carriere *v.* A. & N. R. R. R. Co. 280.
Norfolk, Va.: Upon further hearing distance rates and carload minimum applicable to commercial fertilizer from Norfolk, Va., to points in North Carolina, higher than for like distances between points in North Carolina, found unduly prejudicial to Norfolk, its manufacturers and shippers of commercial fertilizer, in favor of North Carolina points, the manufacturers at such points, and the shippers thereof between points in that state. Reasonable distance rates and carload minimum prescribed. Royster Guano Co. *v.* A. C. L. R. R. Co. 34.
Norfolk, Va.: A manufacturer of fertilizer at Norfolk is entitled to reasonable and nondiscriminatory rates into North Carolina. The fact that shippers having plants in North Carolina as well as at Norfolk are able to a great extent to neutralize any undue prejudice against Norfolk by supplying the demand from their North Carolina plants does not help a shipper having no plant in that state or remove the undue prejudice. Id. (41).

REICING.

Charges on fresh meat, packing-house products, and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; carriers should perform the service and make the charges therefor; and shippers of these products should not be permitted to perform the service of reicing their own and competitors' shipments en route, either directly or through corporations controlled by them. In re Private Cars, 652 (705, 709).

REIMBURSEMENT. *See* REFUND.

RELATIONSHIP OF RATES.

Nonprejudicial relationship as between rates from Huntington, W. Va., and Pittsburgh, Pa., on rails per long ton, export and domestic, will require the Huntington rate to New York to be 77-60ths of the contemporaneous Pittsburgh rate to New York, and less by differentials to Philadelphia and Baltimore the same as applicable from Pittsburgh to same points. West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (116).

Contention that the state of relativity between commodities which features the classification as the real foundation of its structure must necessarily extend to commodity rates, not sustained. Macaroni & Noodle Mfrs. *v.* A. G. S. R. R. Co. 289 (292).

While rail-and-water rates have generally been lower than all-rail rates, there is no rate-making principle that requires such a relationship in all cases, nor that requires the Commission to condemn water-and-rail rates as unreasonable merely because they are on a higher basis than the all-rail rates between the same or adjacent points. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (447).

Mound, La., not found entitled to the same rates as Vicksburg, Miss., on hardwood lumber to points in official classification territory, inasmuch as the potential competition at Mound is much less than at Vicksburg. Pelican Lumber Co. (Inc.) *v.* V., S. & P. Ry. Co. 540.

RELATIVE ADJUSTMENT. *See also* RELATIVE RATES.

Proposed increased rates and differentials under the Virginia cities, on manufactured tobacco from North Carolina manufacturing points to points in southeastern territory, to correspond with that on class traffic, found justified. Southeastern Manufactured Tobacco, 353.

RELATIVE RATES. *See also* PREFERENCES AND PREJUDICES.

Baltimore, Md.: Rates on petroleum and products, in tank-car loads, from Baltimore, Md., to Richmond and Petersburg, Va., found justified compared with rates for similar and greater distances between points in other territories. Richmond Oil Co. (Inc.) *v.* A. C. L. R. R. Co. 213.

Chicago, Ill.: Rates on hogs from Sioux Falls, S. Dak., to Chicago, Ill., exceeded by more than 1 cent the rates applicable from Sioux City, Iowa, to Chicago. Reparation awarded. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126.

Cleveland and Lorain, Ohio: Combination fifth-class rate on crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, compared with rates from Birmingham, Ala., to Philadelphia, Pa., and Kingston, N. Y. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286 (287, 288).

Ione, Wash.: Rates on cedar posts from Ione, Wash., to Helper, Colo., exceeded by more than 3 cents the rate in effect from Spokane. Chaney Co. (Ltd.) *v.* G. N. Ry. Co. 332 (338).

Kansas City, Mo.: Rate on new furniture, n. o. s., from Shelbyville, Ind., to Kansas City, Mo., based on Peoria combination exceeded subsequently established combination rates based on the Mississippi River crossings in effect from Cincinnati, Ohio, and related points. Reparation awarded. Montgomery Ward & Co. *v.* P., C., C. & St. L. Ry. Co. 526.

PREFERENCES AND PREJUDICES—Continued.

Persons—Continued.

Maintaining commutation and special fares for school children between Providence, R. I., and Bristol, R. I., lower than zone fares between Providence, R. I., and Touisset, South Swansea, and Fall River, Mass., not shown unreasonable, but found unduly prejudicial to points and passengers on the Fall River branch and preferential of points and passengers on the Bristol branch. Undue prejudice ordered removed. Gersch *v.* N. Y., N. H. & H. R. R. Co. 486.

Any service by line carrier within the plant, without charge in addition to the line-haul rate or any compensation to complainant or its industrial railway for performing the service, is unduly preferential of complainant and therefore unlawful. National Tube Co. *v.* B. & O. R. R. Co. 489 (500).

Contention that by making live-stock deliveries at the state fair grounds, Nashville, contrary to tariffs, while refusing to make such deliveries at the old stockyards or at complainant's yard, resulted in undue prejudice. *Held:* Complainant was not in competition with shippers so illegally favored, and has suffered no damage. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (551).

On corn from certain points in Illinois, Iowa, Kentucky, and Tennessee, milled at Dyersburg, Tenn., and the products forwarded to various interstate points, local rates to and from Dyersburg assessed, not found unreasonable or prejudicial, inasmuch as complainant did not comply with the tariff requirements governing transit service. Forked Deer Milling Co. *v.* I. C. R. R. Co. 573.

Where the same carrier or carriers serve two shippers, who, by their location, the character of their output, and distance from markets are in substantially similar circumstances and conditions, the serving carrier or carriers can not lawfully prefer one to the other in any manner whatsoever. In re Private Cars, 652 (692).

Morse private-wire service not shown to be unjustly discriminatory or unduly prejudicial to users of respondents' public telegraph service. Private Wire Contracts, 731 (763).

Classification of the Bell Company's private-wire talking service of messages by telephone is not a just and reasonable classification, and in maintaining this talking service the Bell company unduly prefers messages sent by private wire and the lessees of such wires and subjects to undue prejudice messages sent at the toll rates and the senders thereof. Id. (766).

State and interstate:

Maintenance of higher interstate minimum on flour between points in Kansas, Nebraska, Oklahoma, Texas, Arkansas, Missouri, and Iowa than the minima maintained and applied to intrastate transportation of flour within those states found unduly prejudicial to complainants and to interstate commerce. Kansas City Millers' Club *v.* A., T. & S. F. Ry Co. 170 (182).

PRICE. *See* VALUE; VALUE OF COMMODITY.

PRIVATE CARS.

An important part of interstate commerce is transported in privately owned cars. It is to the interest of the owners, carriers, and public that their operation should be continued, under such rules and regulations as will insure their efficient handling without discrimination against any shipper or particular description of traffic. In re Private Cars, 652.

PRIVATE CARS—Continued.

The allowance of ¾ of a cent on the loaded and empty movements for the use of tank cars by carriers should be increased to 1 cent a mile; the increased allowance should be paid for the use of live poultry, palace stock, and heater cars, but not to stock, coke, coal, rack, flat, box, or pocket cars, although they may be privately owned. Id. (652, 709).

Origin and development. Id. (656).

Table showing the number of the several kinds of freight cars owned on January 1, 1913, by private interests, compared with like cars owned by railroads. Id. (659).

Estimated amount of money invested in. Id. (660).

Stock cars which are leased to railroad companies under contract are really railroad cars when used by carriers and are treated as such by connections. Id. (663).

Construction of various kinds. Id. (664).

Allowances paid by carriers for use of. Id. (665).

Per cent of loaded mileage of refrigerator cars operated by railroad-owned car lines on the rails of the owning railroad with that of refrigerator-car lines operated by shippers, shown. Id. (667).

Section 1 construed as to Commission's jurisdiction as to use of. Id. (672).

If private ownership or control of cars of particular types results in greater enconomy and more efficient use, the whole public is to that extent benefited. Id. (673).

Contended that if the Commission has not the power to require carriers to furnish tank cars it should be given it by proper legislation. *Held:* System of use and supply of private cars that now exists can not be at once and radically changed, without serious consequences to shippers, carriers, and the public. Id. (673).

Under circumstances shown, shippers should be permitted to lease cars to transport shipments in interstate commerce from sources independent of carriers by railroad. Id. (675, 709).

When a car, regardless of ownership, is being moved in interstate commerce by a common carrier subject to the act, there is no doubt of the Commission's power to control the carrier's operation of the car so that there shall result no undue preference to any shipper. Id. (677).

The act does not impose on common carriers the obligation to haul private cars in interstate commerce. If they are used, they must be under an arrangement stated definitely in tariffs. Id. (677).

As a means of removing undue prejudice or unjust discrimination the Commission has the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. Requirement not ordered on this record. Id. (677).

When a shipper furnishes his own car for transportation of articles in common use and which move in large volume, he relieves the carrier of so much of its obligation as a common carrier. Id. (680).

A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car less expensive and not so difficult to operate. Id. (680, 709).

Act of May 29, 1917, empowers the Commission to fix compensation to be paid for use of any car not owned by the carrier. Id. (681).

Allowance that shall be paid for use of private cars under all circumstances and conditions must be considered on the average. Id. (683).

PRIVATE CARS—Continued.

Carriers should at least pay for repairs and such depreciation as occurs while the car is in railroad service. Id. (683).

Attempt to fix a stated basis of allowance for use of privately-owned cars would by no means result in justice to all owners or to all carriers. Id. (683).

No attempt made to fix what shall be a reasonable basis from which the amount of the allowance to be paid by the carriers shall be ascertained. Id. (684).

To change the basis of compensation for use of private cars would create great uncertainty as to what the per diem should be, whereas, with the experience of years under the present system, the results from operation may be estimated with substantial accuracy. Id. (685).

Handling of empty car causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. Id. (685).

Under normal conditions the mileage basis secures to the owner payment for the operation of his car. That is what he is entitled to and is that for which the carrier should pay. Id. (686).

The computation of mileage as a basis of payment for private cars should be upon the distance of the haul, with reference to distance tables established by carriers. Id. (686).

Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts. Id. (686, 709).

The life of the average refrigerator and tank car is from 8 to 15 years. Id. (687).

Owners receive larger returns for refrigerator than for other cars. Id. (687).

The service of the carrier on the loaded movement of a tank car is greater than on a refrigerator car; average earnings also greater. Id. (688).

Carriers should publish in their tariffs a rule that privately owned or leased cars when unloaded at destination, unless otherwise ordered by the owner or lessee, must be promptly transported, loaded, or empty, in the direction of the plant of the owner or lessee. Id. (692, 709).

Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars. Id. (695, 709).

Private cars standing on tracks of owners shall not be subject to demurrage charges. Id. (705, 710).

Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made should be adopted. Id. (707, 710).

Tables showing mileage received by refrigerator, tank, and other private-car owners for year 1912, and from January 1, 1913, to January 1, 1918, together with a comparison of the total of repairs and depreciation. Id. (711).

Statement showing the performance of private cars of different kinds as operated by different classes of car owners or operators. Id. (714).

PRIVATE SIDING.

Contention by complainant that its yard is situated on a private siding because no other deliveries can be made on that part of the track adja-

PRIVATE SIDING—Continued.
cent to its yard, due to the absence of a roadway, not sustained as part of the track leading to complainant's yard is used as a team track. Ottawa Coal & Supply Co. *v.* D., T. & I. R. R. Co., 87 (88).

PRIVATE-WIRE SERVICE.
Private-wire equipment is a part of the quasi-public facilities of a common carrier, was as a rule installed as such, and is entitled as a matter of law to be located under the right of eminent domain. Private-Wire Contracts (740).
How obtained. Id. (742).
Review of actual use made of private wires. Id. (746).
Almost any message will be transmitted over a broker's wire if the lessee can perceive any direct or indirect interest in the transaction, or in a trade that may follow, however remote. Id. (747).
Private-wire talking service is more efficient than public-toll service, but the superiority is less marked than in the case of public and private wire Morse service. Id. (755).
The lawfulness of the so-called private-wire service depends upon whether or not private-wire messages are among "such other classes as are just and reasonable" into which respondent carriers are authorized by section 1 to classify messages transmitted over their lines. Id. (756).
Private-wire contracts were in force for many years before the amendment of June 18, 1910, and had the Congress desired either to recognize the propriety of such contracts, or to forbid them, it could have expressed this intent in appropriate language, which was not done. Id. (756).
Respondents are common carriers engaged in the transmission of intelligence, and, as to their interstate business, are subject to the provisions of the act. Id. (757).
The so-called wholesale theory has no proper place in the rates of common carriers; and, in so far as charges for private-wire service are based upon this theory, the Commission finds that the classification is not just and reasonable. Id. (757).
Lessees of private wires are not common carriers, and the fact that in Morse private-wire service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires. Id. (759).
Request that Commission abolish private-wire service. *Held:* While abolition of this service might be the easiest way to meet the difficulties encountered in its regulation, the act does not confer upon the Commission arbitrary power in regard to classification of messages by carriers, but such classification must be considered in connection with the myriad details incident to any complicated rate problem. Id. (759).
Fact that in Morse service the lessees furnish their own operators does not divest respondents of their status of common carriers as to messages sent over the private wires. Id. (759).
Record justifies conclusion that respondents furnish private-wire service to all applicants therefor, at least to the capacity of their spare facilities, without discrimination and in order of the application. Id. (761).
Record does not sustain conclusion that the Morse private-wire service is a wholesale service. Id. (761).
Character of the Morse private-wire service differs from that furnished over the public wires and, stripped of certain abuses, may be recognized

PRIVATE-WIRE SERVICE—Continued.

as a separate class of service available to the public upon reasonable compensation. Id. (762).

Provision in the private-wire contracts of one respondent that in time of interruption to the private wires the public wires can be used at half the regular rates must be removed. Id. (763).

Status of "contraband" messages can be determined only in a court of competent jurisdiction. Id. (763).

There is no proper analogy between private-wire service and the practice of aggregating shipments into carload lots and shipping them at carload rates. Id. (764).

Respondents are justified in inserting in the contract for private-wire service a provision restricting the use of instruments and facilities provided to the transmission of messages concerning the business of the lessee, and providing that messages shall not be transmitted for other persons or firms. It is not unlawful for two or more persons to unite in securing private-wire service where all are named as lessees. Id. (764).

It seems proper and necessary from a practical standpoint and in the interest of the public, to apply some reasonable restrictions to the private-wire service. Id. (764).

In rendering Morse private-wire service and the public-message service at their present rates respondents are furnishing the more valuable service at a relatively lower charge, contrary to recognized principles of classification. Id. (765).

Charges for messages other than by private wire are not in issue, and the Commission can not assume that rates for the latter should be increased rather than those for sending day messages should be reduced. No order entered but respondents should consider whether or not their rates for Morse private-wire service should be revised. Id. (765).

Classification of Bell Company's private wire talking service is not a just and reasonable classification, and in maintaining this talking service the Bell Company unduly prefers messages sent by private wire and the lessees of such wires, and subjects to undue prejudice messages sent at the toll rates and the senders thereof. Id. (766).

PROFIT.

The reasonableness of rates is not to be gauged solely by the ability or inability of shippers to market their products with a profit. Virginia Pine Timber Co. *v.* N. Y., P. & N. R. R. Co. 327 (329).

PROOF. *See* BURDEN OF PROOF.

"PROPERTY."

Word "property" of that part of section 6, as amended by the Panama Canal act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates, between rail and water carriers. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (631, 632).

PROPORTIONAL RATES

In view of the rates established on sulphur to Hattiesburg, Miss., rates to Hattiesburg and to Meridian, based upon the proportional rates from Sulphur Mines, La., to New Orleans, for export or for coastwise movement, plus the proportional rates from New Orleans to those destinations, applicable to imported pyrites, is not illogical. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379 (382).

Allegation that joint rates on sewer pipe from Ohio points to certain destinations in Wisconsin and Michigan which exceeded the aggregates of

PROPORTIONAL RATES—Continued.

proportional rates plus the rates beyond was in violation of section 4. *Held:* Proportional rates are not intermediate rates within the meaning of section 4. Williams Co. *v.* P. Co. 531 (536).

PROVISO.

It is a general rule of construction that a proviso is not to be understood as adding new matter to the main clause, but rather as saving from its operation certain of the subjects to which it is addressed and modifying the law as to them. Legality of Express Franks, 599 (603).

PRUNES.

Preparation and packing for shipment described. Eastbound Transcontinental Canned Goods (No. 2), 62 (64).

RAIL AND WATER. *See also* WATER AND RAIL.

On shipments of cast-iron pipe fittings from Chattanooga, Tenn., to Manila, P. I., S. P. agent at St. Louis named rate of $13 per net ton. Cars loaded and tendered initial carrier who refused to issue bills of lading naming $13 rate and shipments moved at rate of $16, subsequently established. *Held:* Rate of $13 found legally applicable and reparation awarded. Casey-Hedges Co. *v.* A. G. S. R. R. Co. 240.

Water carrier controlled by and concurs in tariffs of S. P. Co., although not named therein. Contention that through rate was published only for convenience and was not binding. *Held:* Tariffs properly concurred in and through transportation subject to Commission's jurisdiction. Id. (242).

While rail-and-water rates have generally been lower than all-rail rates, there is no rate-making principle that requires such a relationship in all cases nor that requires the Commission to condemn water-and-rail rates as unreasonable merely because they are on a higher basis than the all-rail rates between the same or adjacent points. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (447).

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with the complainant, found to result in undue prejudice. Joint fares no higher than maintained by the N. E. S. S. Co., required established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

The Commission has jurisdiction of carriers both by rail and by water; is empowered to establish through routes and joint rates between and over rail-and-water lines; and is authorized to determine all the terms and conditions under which such lines shall be operated. Id. (631).

RAISINS.

Process of preparation for shipment described. Eastbound Transcontinental Canned Goods (No. 2), 62 (64).

REASONABLENESS OF RATES. *See* MEASURE OF RATES.

REBILLING.

The practice of terminal carriers of requiring complainants, at their own expense, to transfer to other equipment, shipments of hay delivered to team tracks in St. Louis or East St. Louis in bad-order cars, as a precedent to permitting rebilling to points beyond, found an unjust, unreasonable, and unduly prejudicial practice. Reparation awarded. Merchants Exchange of St. Louis *v.* T. R. R. Asso. of St. L. 474.

When cars in bad order are accepted by the terminal company, they are subject to all the rights of the shippers, and one of these, recognized by years of practice by carriers throughout the entire country, is that of rebilling in the same car. Id. (475).

RECONSIDERATION. *See also* SUPPLEMENTAL REPORT.

In original report Unrep. 1817, shipment of steel from Chicago, Ill., to Ogden, Utah, could not be loaded in side door of box car, but was loaded through end window, and rate charged, based on 5,000-pound minimum, not found unreasonable. Upon further consideration, original finding adhered to. Lowe Co. *v.* C., M. & St. P. Ry. Co. 403.

RECONSIGNMENT.

Combination rate on oak lumber from Clearfield, Ky., to Maysville, Ky., reconsigned to New Kensington, Pa., found illegal to extent that the factor between Morehead and Maysville exceeded the charges to Cincinnati, Ohio, to which Maysville is intermediate. Reparation awarded. Clearfield Lumber Co. *v.* C. & O. Ry. Co. 93.

On a shipment of lumber from Malone, Fla., to Evansville, Ind., reconsigned to Rockford, Ill., demurrage charges found to have lawfully accrued. Shipment arrived at Evansville and was ordered reconsigned to Hamilton. No joint rate in effect from Malone to Hamilton and carriers could not lawfully comply with order and so notified complainant who then ordered the shipment reconsigned to Rockford. National Lumber Co. *v.* A., F. & S. R. R. Co. 133.

The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignments bore symbols denoting both increase and reduction, did not affect the validity of the item, as it was allowed to become effective in each instance. New Era Milling Co. *v.* St. L. & S. F. R. R. Co. 207 (210).

Tariff permitted reconsignment at the through rate from point of origin to final destination, when "bona fide rejection by original consignee" is shown. No evidence showing shipment was actually rejected at Webster and combination rates on lumber from Greeneville, Tenn., to Webster, N. Y., diverted to Wellsville, N. Y., found legally applicable. National Wholesale Lumber Dealers' Asso. *v.* S. Ry. Co., 405.

REDUCTION IN RATES.

In general:

The fact that reduced rates were subsequently established does not, in itself, furnish a sufficient basis for an award of reparation. Mount Pleasant Fertiliser Co. *v.* L. & N. R. R. Co., 253 (254).

By carriers:

Charges legally applicable on rails and angle bars, in mixed carloads, from Cincinnati, Hamilton, and Lockland, Ohio, to Ferris, Tex., found unreasonable to extent they exceeded rates subsequently established. Reparation awarded. Southern Engineering & Construction Co. *v.* St. L.-S. F. Ry. Co., 95.

Combination rate on lumber from Pace Junction, Fla., to Middlesborough, Ky., through Birmingham, Ala., subsequently reduced to equal the aggregate of intermediate rates in effect to and from Birmingham, found to have been unreasonable to that extent. Reparation awarded. Carolina Portland Cement Co. *v.* L. & N. R. R. Co., 98.

Combination rate on coconut oil from Boston, Mass., to Ivorydale, Ohio, reconsigned to Kansas City, Mo., found unreasonable to extent it exceeded lower rate over another available route, which lower rate was subsequently established over route of movement. Reparation awarded. Procter & Gamble Co. *v.* B. & A. R. R. Co., 131.

Rates charged on condensed smoke, in glass, l. c. l., from Kansas City, Mo., to San Francisco, Cal., and certain other points, found not

REDUCTION IN RATES—Continued.
By carriers—Continued.
justified to extent they exceeded rates formerly in effect and subsequently restored. Reparation awarded. Wright & Co. (Ltd.) *v.* A., T. & S. F. Ry. Co., 225.
Class rate on lumber from Nadawah, Ala., to Cartersville, Ga., found unreasonable to extent it exceeded combination rate via another route and subsequently established over route of movement. Reparation awarded. American Lumber & Export Co. *v.* L. & N. R. R. Co. 259.
Legal fourth-class rates assessed on interstate l. c. l. shipments of secondhand empty iron oil drums, returned, from Oregon and Washington to Portland, Oreg., and Seattle, Wash., not found unreasonable as compared with rate of one-half fourth-class on secondhand empty barrels, subsequently established on l. c. l. shipments of secondhand empty iron drums. Standard Oil Co. (California) *v.* N. P. Ry. Co., 350.
Domestic rates applicable to fertilizer and fertilizer material, assessed on imported pyrites ore from Pensacola, Fla., to Gulfport, Miss., exceeded import rate subsequently established. Reparation awarded. Gulfport Fertilizer Co. *v.* L. & N. R. R. Co. 432.
Rate on new furniture, n. o. s., from Shelbyville, Ind., to Kansas City, Mo., based on Peoria combination exceeded subsequently established combination rates based on the Mississippi River crossings. Reparation awarded. Montgomery Ward & Co. *v.* P., C., C. & St. L. Ry. Co. 526.
By Commission:
Rates on petroleum products, in tank-car loads, from certain points in Missouri, Kansas, and Oklahoma, to Salt Lake City and Provo, Utah, found unreasonable to extent they exceeded rates prescribed in *Midcontinent Oil Rates*, 36 I. C. C., 109. Reparation awarded. Culmers Co. *v.* A. T. & S. F. Ry. Co. 90.
Fourth-class rate on sulphuric acid from Fayville, Ill., to Ishpeming, Mich., found unreasonable to extent it exceeded the aggregate of intermediate rates in effect to and from Chicago, Ill. Reparation awarded. Aetna Explosives Co. *v.* C. & E. I. R. R. Co. 106.
Rates legally applicable on scrap iron rails from New Orleans, La., to Richmond, Va., found unreasonable to extent it exceeded rate applicable on scrap iron. Reparation awarded. Joseph Iron Co. *v.* M. L. & T. R. R. & S. S. Co. 107.
Rates on hogs from Sioux Falls, S. Dak., to Chicago, Ill., exceeded by more than 1 cent the rates applicable on like traffic from Sioux City, Iowa, to Chicago. Reparation awarded. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126.
Rate on potatoes from Grand Forks, N. Dak., to Spiro, Okla., found unreasonable to extent it exceeded the aggregate of intermediate rates to and from Kansas City. Reparation awarded. Fort Smith Commission Co. *v.* K. C. S. Ry. Co. 135.
Rate on cast-iron pipe from North Birmingham, Ala., to Watervliet, Mich., exceeded lower rate in effect to farther distant points. Reasonable rate prescribed and reparation awarded. American Cast Iron Pipe Co. *v.* L. & N. R. R. Co. 168.
Sixth-class rates on coal ashes and cinder from Coatesville, Pa., to Carney's Point and Gibbstown, N. J., found unreasonable to extent

REDUCTION IN RATES—Continued.
By Commission—Continued.
they exceed rates per net ton plus switching charge of 20 cents of the P. & R. Ry. at Coatesville. Reparation awarded. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203.
Fifth-class rate on green salted hides, from Memphis, Tenn., to Fort Smith, Ark., is higher than rates in reverse direction. *Held:* Disparity of rates too great and unreasonable but not shown to be discriminatory. Maximum reasonable rate prescribed. Merchants Freight Bureau of Little Rock, Ark. *v.* M. P. R. R. Co. 247.
Rate on apples from Marshfield, Mo., to Springfield, Mo., reconsigned to Tulsa, Okla., found unreasonable to extent it exceeded the reasonable maximum rate prescribed herein. Reparation awarded. Mills & Co. *v.* St. L.-S. F. Ry. Co. 260.
Combination rates on dried beans from Estancia, N. Mex., to Muskogee, Okla., and from Estancia, Willard, Mountainair, N. Mex., to Durant, Okla., found unreasonable as compared with rates from and to other points in the same general territory. Reasonable maximum rates prescribed and reparation awarded. Hale-Halsell Grocery Co. *v.* N. M. C. R. R. Co. 263.
Rate on wooden tent pins, from Terre Haute, Ind., to St. Louis, Mo., found unreasonable to extent it exceeded the rate applicable to lumber between the same points, subject to conclusion pending in *Lumber and Lumber Products Case,* Docket No. 8131. Reparation awarded. Ash Products Co. *v.* V. R. R. Co. 283.
Combination fifth-class rate on crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, found unreasonable as compared with sixth-class rate subsequently established in official classification territory. Reasonable maximum rate prescribed and reparation awarded. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286.
Rates on mine props to Shenandoah, Pa., and points taking same rates, from certain points in Delaware, Maryland, and Virginia, found unreasonable and reasonable rates prescribed. Reparation denied. Virginia Pine Timber Co. *v.* N. Y., P. & N. R. R. Co. 327 (330).
Following *Chaney Co. Case,* 50 I. C. C., 332, rate on cedar posts from Alpine Spur, Idaho, to Payette, Idaho, via an interstate route, found unreasonable to extent it exceeded by more than 3 cents per 100 pounds the rate in effect from Spokane, Wash., to the same destination. Ewing & Co. (Ltd.) *v.* S. I. Ry. Co. 339.
Rates on binder or canvas slats, from Nashville, Tenn., to Peoria, East Moline, and Chicago, Ill., and St. Louis, Mo., exceeded rates applicable to carpenters' molding. Reparation awarded. Nashville Hardwood Flooring Co. *v.* C., B. & Q. R. R. Co. 367.
Sixth-class rate of 54 cents on crude barytes from Cartersville, Ga., to Hazard, Pa., found unreasonable to extent it exceeded 21.9 cents per 100 pounds, minimum 60,000 pounds. Reparation awarded. New Jersey Zinc Co. *v.* B. & O. R. R. Co. 429.
On l. c. l. shipments of baby walkers, k. d., in crates and bundles, from Walton, N. Y., to Tacoma, Wash., rates applicable to toys assessed, found unreasonable to extent they exceeded rates of first class, in crates, and one and one-half times first class, in bundles, applicable to furniture in western classification. Reparation awarded. Harmon & Co. *v.* N. Y., O. & W. Ry. Co. 451.

REDUCTION IN RATES—Continued.
By Commission—Continued.
On brass plated or coated iron rods from Wallingford, Conn., to Tacoma, Wash., commodity rate of $1.50, minimum 30,000 pounds, assessed. Fifth-class rate of $1.90, minimum 36,000 pounds, under western classification, legally applicable. *Held:* Legally applicable rate found unreasonable to extent it exceeded rate assessed. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455.
Rates on clay hollow building blocks, from Brookville, Pa., to Atlantic seaboard cities and points taking same rates, found justified but unduly prejudicial to extent they exceed the rates from certain other points in the same clay zone to the same destinations. Humphrey Brick & Tile Co. *v.* P. R. R. Co. 457.
Following *Dallas Chamber of Commerce Case*, 40 I. C. C. 619, commodity rate of 70 cents on potatoes from Minnesota and Wisconsin producing points to the Dallas-Fort Worth group found unreasonable to extent it exceeded 65 cents; same rate to the rest of Texas common-point territory not shown unreasonable, compared with lower rates from Idaho, Colorado, and California. Reparation awarded. Northern Potato Traffic Asso. *v.* A., T. & S. F. Ry. Co. 528.
REFRIGERATION.
Distance rates on l. c. l. shipments of bottled milk, iced, in cases, from Ravenna, Ohio, to Pittsburgh, Pa., moving in passenger trains, found not justified to extent they exceeded subsequently established rate of 22 cents per case under refrigeration and 18 cents when not under refrigeration. Reparation awarded. Rieck Co. *v.* B. & O. R. R. Co. 298.
Contended that if a stated charge per car or per 100 pounds is established by carriers, it would necessarily be fixed high enough to cover maximum refrigeration which would burden the traffic with charges for services not performed or required. *Held:* It is doubtful if any allowance could be agreed upon or prescribed that would be just and reasonable in all cases. In re Private Cars, 652 (702, 703).
REFRIGERATOR CARS.
On apples ordinarily moving in box cars from points in Michigan to points in Iowa, due to cold weather it was found necessary to use refrigerator cars. Under the circumstances charge of $5 per car per trip for their use found not unreasonable. Gamble Robinson Commission Co. *v.* A. & B. R. Ry. Co. 324.
REFUND.
Tariff provisions, manifestly established to control or influence the outbound movement of cotton to Memphis, Tenn., for concentration or compression and reshipment beyond, and denying refunds on basis of through rates from original points of shipment, found unreasonable. Reparation awarded. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345.
Contention that reimbursement of actual expenses incurred in furnishing a transportation facility which defendants were under obligation to supply, may properly be made under section 15, and that refusal of defendant to make refund has been occasioned solely by its neglect to incorporate in the tariffs the fact and amount of the allowance, admitted. Lehigh Coal & Nav. Co. *v.* P. R. R. Co. 543 (544).

REFUSED SHIPMENT.

Tariff permitted reconsignment at the through rate from point of origin to final destination, when "bona fide rejection by original consignee" is shown. No evidence showing shipment was actually rejected at Webster and combination rate on lumber from Greeneville, Tenn., to Webster, N. Y., diverted to Wellsville, N. Y., found legally applicable. National Wholesale Lumber Dealers' Asso. *v.* S. Ry. Co. 405.

REHEARING. *See also* RECONSIDERATION; SUPPLEMENTAL REPORT.

Following finding made in original report, 37 I. C. C., 652, in which reasonable rates and zones were prescribed, Charlotte, N. C., was placed in zone 3. Petition for modification by placing Charlotte in zone 2, a lower rate group, upon rehearing found not justified, in that the proposed change would wholly disrupt the rate adjustment. Bituminous Coal Rates to the Southeast, 1.

Upon rehearing, finding as to divisions of joint rates prescribed in supplemental report herein, 40 I. C. C., 335, between New York, N. Y., and Duluth, Minn., and points west thereof applicable via routes composed of eastern trunk lines, Grand Trunk Ry. Co. of Canada, Northwestern S. S. Co., and rail lines west of Duluth, modified. Port Huron & Duluth S. S. Co. *v.* P. R. R. Co. 157 (165).

Finding in *Western Rate Advance Case*, 25 I. C. C., 497, that carriers had justified a minimum weight of 40,000 pounds on grain products, affirmed on rehearing. Kansas City Millers' Club *v.* A., T. & S. F. Ry. Co. 170 (183).

In original report, Unrep. A-643, rate of 16 cents found applicable on box shooks from Vicksburg, Miss., to Port Arthur, Tex., and finding reaffirmed in 39 I. C. C. 734. Detailed statement prepared but defendant refused to certify that shipments consisted of box shooks. *Held:* Evidence conclusively shows shipments consisted of box shooks, although they were billed as box material, which term includes box shooks. Reparation awarded. Anderson-Tully Co. *v.* A. & V. Ry. Co. 553.

In original report, 42 I. C. C., 593, charges of the P. M. R. R. for trap-car service from complainants' factories to freight station at Grand Rapids, Mich., found not fully justified and defendant on May 7, 1917, established charges covering this service, which charges, upon rehearing, found unreasonable to extent they exceeded $3 per car. Reparation awarded. Macey Co. *v.* P. M. R. R. Co. 555.

In original report, 46 I. C. C., 412, rates on sand and gravel from Allison Branch, Ill., to points in Indiana, found unreasonable and rates the same as intrastate rates from Emison to same destination prescribed. Rates from Emison subsequently increased so that present rates from Emison are higher than those formerly in effect from Allison Branch. Upon rehearing former finding reversed. Anderson-Theobald Co. *v.* V. R. R. Co. 596.

In original report, 46 I. C. C., 527, class and commodity rates from Cincinnati, or through Cincinnati from beyond, by way of Speers Ferry to Johnson City, Tenn., found prejudicial to Johnson City and preferential of Bristol, Tenn.-Va. Carriers undertook to remove discrimination by increasing Bristol rates to the Johnson City basis. Upon rehearing, finding in original report adhered to and removal of discrimination ordered. Chamber of Commerce of Johnson City, Tenn., *v.* S. Ry. Co., 605.

REICING.

Charges on fresh meat, packing-house products, and dairy products should be based on the cost of the ice and salt used, the labor, investment in icing plants, etc., together with a reasonable profit; carriers should perform the service and make the charges therefor; and shippers of these products should not be permitted to perform the service of reicing their own and competitors' shipments en route, either directly or through corporations controlled by them. In re Private Cars, 652 (705, 709).

REIMBURSEMENT. *See* REFUND.

RELATIONSHIP OF RATES.

Nonprejudicial relationship as between rates from Huntington, W. Va., and Pittsburgh, Pa., on rails per long ton, export and domestic, will require the Huntington rate to New York to be 77-60ths of the contemporaneous Pittsburgh rate to New York, and less by differentials to Philadelphia and Baltimore the same as applicable from Pittsburgh to same points. West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (116).

Contention that the state of relativity between commodities which features the classification as the real foundation of its structure must necessarily extend to commodity rates, not sustained. Macaroni & Noodle Mfrs. *v.* A. G. S. R. R. Co. 289 (292).

While rail-and-water rates have generally been lower than all-rail rates, there is no rate-making principle that requires such a relationship in all cases, nor that requires the Commission to condemn water-and-rail rates as unreasonable merely because they are on a higher basis than the all-rail rates between the same or adjacent points. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (447).

Mound, La., not found entitled to the same rates as Vicksburg, Miss., on hardwood lumber to points in official classification territory, inasmuch as the potential competition at Mound is much less than at Vicksburg. Pelican Lumber Co. (Inc.) *v.* V., S. & P. Ry. Co. 540.

RELATIVE ADJUSTMENT. *See also* RELATIVE RATES.

Proposed increased rates and differentials under the Virginia cities, on manufactured tobacco from North Carolina manufacturing points to points in southeastern territory, to correspond with that on class traffic, found justified. Southeastern Manufactured Tobacco, 353.

RELATIVE RATES. *See also* PREFERENCES AND PREJUDICES.

Baltimore, Md.: Rates on petroleum and products, in tank-car loads, from Baltimore, Md., to Richmond and Petersburg, Va., found justified compared with rates for similar and greater distances between points in other territories. Richmond Oil Co. (Inc.) *v.* A. C. L. R. R. Co. 213.

Chicago, Ill.: Rates on hogs from Sioux Falls, S. Dak., to Chicago, Ill., exceeded by more than 1 cent the rates applicable from Sioux City, Iowa, to Chicago. Reparation awarded. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126.

Cleveland and Lorain, Ohio: Combination fifth-class rate on crude naphthalene from Denver, Colo., to Cleveland and Lorain, Ohio, compared with rates from Birmingham, Ala., to Philadelphia, Pa., and Kingston, N. Y. Metzger *v.* N. Y., C. & St. L. R. R. Co. 286 (287, 288).

Ione, Wash.: Rates on cedar posts from Ione, Wash., to Helper, Colo., exceeded by more than 3 cents the rate in effect from Spokane. Chaney Co. (Ltd.) *v.* G. N. Ry. Co. 332 (338).

Kansas City, Mo.: Rate on new furniture, n. o. s., from Shelbyville, Ind., to Kansas City, Mo., based on Peoria combination exceeded subsequently established combination rates based on the Mississippi River crossings in effect from Cincinnati, Ohio, and related points. Reparation awarded. Montgomery Ward & Co. *v.* P., C., C. & St. L. Ry. Co. 526.

RELATIVE RATES—Continued.

Lancaster, Mineral Point, and Platteville, Wis.: Rates on petroleum and products from Reno, Pa., to, compared with rates to various other points in Wisconsin, Iowa, and Illinois. Empire Oil Works *v.* N. Y. C. R. R. Co. 99 (100).

Leavenworth, Wash.: Rate on box shooks from Leavenworth, Wash., to Palisade, Colo., found unreasonable to extent that it exceeded by more tion 1 cent per 100 pounds the rate from Spokane to Palisade. Reparation awarded. Chaney Co. (Ltd.) *v.* G. N. Ry. Co. 332 (337).

Minnesota, etc., potato producing points: Proposed rates on potatoes from Minnesota, Michigan, Wisconsin, North Dakota, and South Dakota to various jobbing and consuming points, compared with rates maintained in C. F. A. territory, but this test is not accurate, since the C. F. A. rates include the use of refrigerator cars, and carriers assume full risk. Western Trunk Line Potatoes, 407 (412).

Mount Pleasant, Tenn.: Rates on fertilizer from Mount Pleasant, Tenn., to Collinsville, Porterville, and Colibran, Ala., not found unreasonable compared with rate prescribed from Norfolk to points in North Carolina. Mount Pleasant Fertilizer Co. *v.* L. & N. R. R. Co. 253 (254).

Norfolk, Va.: The level of the interstate rates on fertilizer in the southeast is influenced by that of the intrastate rates, and there are no transportation conditions justifying higher rates, distances considered, from Norfolk, Va., into North Carolina than between points within North Carolina. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

Payette, Idaho: Following *Chaney Co. Case*, 50 I. C. C., 332, rate on cedar posts from Alpine Spur, Idaho, to Payette, Idaho, via an interstate route found unreasonable to extent it exceeded by more than 3 cents the rate from Spokane, Wash. Ewing & Co. (Ltd.) *v.* S. I. Ry. Co. 339.

St. Paul and Minneapolis, Minn.: Rates on coal from Manitowoc, Wis., to St. Paul and Minneapolis, Minn., found justified compared with rates from Chicago, Ill., Milwaukee, Wis., and basis of rates in western trunk line territory for similar and greater distances. Northwestern Traffic & Service Bureau *v.* M., St. P. & S. Ste. M. Ry. Co. 575.

Salt Lake City and Provo, Utah: Rates on petroleum products, in tank-car loads, from certain points in Missouri, Kansas, and Oklahoma to Salt Lake City and Provo, Utah, exceeded rates prescribed in *Midcontinent Oil Rates*, 36 I. C. C., 109, and rates to California terminals. Reparation awarded. Culmers Co. *v.* A., T. & S. F. Ry. Co. 90.

Sparrows Point, Md.. Rate on iron and steel rails from Sparrows Point, Md., to Huntington, W. Va., found justified and not shown to be prejudicial to Huntington as compared with rates to Newark and Lorain, Ohio, Pittsburgh, Pa., and between other points in C. F. A. territory. West Virginia Rail Co. *v.* P. R. R. Co. 304.

Spokane, Wash.: Rates on cedar poles, in single carloads, from Chewelah, Wash., Sand Point and Colalla Spur, Idaho, to Mohrland, Utah, Leadville and Montrose, Colo., and on cedar posts from Gravel Pit, Idaho, to Alamosa, Colo., found unreasonable to extent they exceed by more than 2 cents rates in effect from Spokane to same destinations. Chaney Co. (Ltd.) *v.* G. N. Ry. Co. 332 (338).

Spokane, Wash.: Rates on box shooks from Spokane, Wash., to Palisade and other points in Colorado not shown unreasonable compared with rates from the Pacific coast group. Id. (334, 337).

RELEASED RATES.

On blackstrap molasses from Mobile, Ala., to Memphis, Tenn., shippers required to state actual value and pay higher rate on shipments worth more than 8 cents per gallon, while shippers to St. Louis, Mo., secure lower rate by having been able to declare a value of 8 cents, although limiting the carriers' liability. Rates to Memphis, Tenn., were not authorized by the Commission and are therefore unlawful. Reasonable rates prescribed. Buckeye Cotton Oil Co. *v.* G. M. & N. Ry. Co. 32.

The Cummins amendment requires rates on domestic traffic, based on value, to be expressly authorized by the Commission before they can be regarded lawful. Id. (33).

The second Cummins amendment placed rates and ratings dependent upon the value "declared in writing by the shipper" and those predicated on value "agreed upon in writing as the released value of the property" in the same category; such rates and ratings are unlawful unless and until expressly authorized by the Commission. *Express Rates*, 43 I. C. C., 510; *Live Stock Classification*, 47 I. C. C., 335; *Williams Co.*, 48 I. C. C., 269, reaffirmed and followed. Silk Asso. of America *v.* P. R. R. Co. 50 (53).

The decision in *Silk Asso. of America*, 44 I. C. C., 578, in which the official classification ratings of first class and one and one-half times first class on silk valued at $1 per pound or less and in excess of $1 per pound, respectively, stated in writing by the shipper, were justified and approved, furnished lines in official classification territory with express authority to maintain such ratings within the meaning of the second Cummins amendment. Id. (53).

The maintenance of rates on ordinary live stock in terms of value subsequent to the amendment of the act by the Cummins amendment of August 9, 1916, was unlawful. Wilson & Co. *v.* C., M. & St. P. Ry. Co. 126 (129).

Charges assessed at 103 per cent of the basic rates on sheep from points in Nevada to San Francisco and Oakland, Cal., billed at a declared value of $4.50 per head, not found unreasonable following *Iowa Railroad Commissioners Case*, 36 I. C. C., 79, but to have been unlawful. Reparation denied. Miller & Lux, (Inc.) *v.* S. P. Co. 425.

REOPENING. *See* RECONSIDERATION; REHEARING; SUPPLEMENTAL REPORT.

REPAIRS.

Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made should be adopted. In re Private Cars, 652 (707, 710).

REPARATION. *See* DAMAGES.

REPEAL.

Where there are two acts on the same subject the general rule is undoubtedly to give effect to both if possible, but if the two acts are repugnant in any of their provisions the latter act, even though it may contain no repealing clause, will operate to repeal the former act to the extent of the repugnancy. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (630).

RESHIPPING RATES.

Proposed cancellation of reshipping rates on grain and grain products from Peoria and Pekin, Ill., to eastern trunk line territory via routes embracing portions of the Illinois Central Railroad found to be justified. Grain Reshipped from Peoria, 185 (190-B).

Complaint seeking the establishment of lower ex-lake rates and ex-rail reshipping rates on grain and grain products from Toledo, Ohio, to points in eastern trunk line territory, on the basis of 78 per cent of the

RESHIPPING RATES—Continued.

ex-lake and ex-rail rates from Chicago to New York, and the establishment of joint rates on grain from Missouri River cities to Toledo, found not sustained. Toledo Produce Exchange *v.* N. Y. C. R. R. Co. 515 (521).

RESTORED RATES.

Combination rates charged on yellow-pine lumber from Rhinehart Spur, La., to Lincolnville and Mahaska, Kans., and San Jon, N. Mex., via Eunice, La., found unreasonable to extent they exceeded joint rates formerly in effect and subsequently restored. Reparation awarded. Elton Lumber Co. (Ltd.) *v.* N. O., T. & M. R. R. Co. 85.

On sweet potatoes from Dardanelle, Ark., to Joplin, Mo., proposed increase of commodity rate from 22 cents to 27 cents became effective by expiration of suspension order. Commission later found higher rate not justified and ordered it canceled, restoring the 22-cent rate. Reparation awarded. Fort Smith Commission Co. *v.* K. C. S. Ry. Co. 109.

Rates charges on condensed smoke, in glass, l. c. l., from Kansas City, Mo., to San Francisco, Cal., and certain other points, found not justified to extent they exceeded rates formerly in effect and subsequently restored. Reparation awarded. Wright & Co. (Ltd.) *v.* A., T. & S. F. Ry. Co. 225.

Double first-class express charges on slate in less-than-carloads from Monson, Me., to Cleveland, Ohio, published in error, found illegal and unreasonable to extent it exceeded the first-class rate formerly in effect and subsequently restored. Reparation awarded. Electric Controller & Mfg. Co. *v.* Am. Exp. Co. 243.

RETURN OF CARS.

Proposed increased rate for the movement of empty fish cars, found justified. The compensation received for the movement of loaded and empty fish cars, as compared with the revenue derived from other equipment, is clearly not a proper measure of the rate on empty fish cars. Express Charges on Empty Fish Cars, 24.

Carriers should publish in tariff, rules that privately owned or leased cars when unloaded at destination unless otherwise ordered by the owner or lessee, must be promptly transported, loaded or empty, in the direction of the plant of the owner or lessee. In re Private Cars, 652 (692, 709).

The failure to return cars to the smaller packers is due to the neglect of a lawful duty by carriers. Id. (691).

RETURNED EMPTIES.

Combination rate of one-half fourth-class on empty beer packages, returned to La Crosse, Wis., from certain Minnesota points, not found unreasonable following *Holmes & Hallowell Co., Case,* 37 I. C. C., 627. Heileman Brewing Co. *v.* C., B. & Q. R. R. Co. 273.

Rates on empty beer packages, returned from Moorhead and Breckenridge, Minn., to La Crosse, Wis., not shown unreasonable or prejudicial compared with rates on like traffic between Chicago, Ill., and Milwaukee, Wis., and these Minnesota points. Id. (274, 276).

Legal fourth-class rates on l. c. l. shipments of secondhand empty iron oil drums, returned from points in Oregon and Washington to Portland, Oreg., and Seattle, Wash., not found unreasonable as compared with rate of one-half fourth-class in effect on secondhand empty barrels, which rate was subsequently established on secondhand empty iron drums. Standard Oil Co. (California) *v.* N. P. Ry. Co. 350.

Rates on crackers, cookies, and wafers, l. c. l., from Omaha, Nebr., to points in Kansas, and on empty cracker cans, l. c. l. returned

RETURNED EMPTIES—Continued.

to Omaha from the same Kansas points, found violative of section 4 to extent they exceeded rates from and to Neoga, Chautauqua, and other points in western Iowa east of Omaha. Following *Oregon Fruit Co. Case*, 50 I. C. C., 719, reparation denied. Iten Biscuit Co. *v.* C., B. & Q. R. R. Co. 724.

REVENUE. *See also* EARNINGS; TON-MILE REVENUE.

Reshipping rates on grain from Peoria and Pekin, Ill., to eastern trunk line territory are unreasonably low for application via the routes afforded by the Illinois Central Railroad, and the revenue derived is not sufficient to justify the requirement of its continuance. Grain Reshipped from Peoria, 185 (190–A).

Effect of the European war upon revenues of steamer lines operating between eastern shore of Virginia and Baltimore, Md., shown. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (444, 445).

REVENUES AND EXPENSES.

Table of operating revenues and expenses of express companies, December, 1916–17. Proposed Increase in Express Rates, 385 (389).

Comparison of all operations of the principal express companies. Id. (393).

Comparison of revenues and expenses of domestic express, all operations, of the principal express companies. Id. (394).

RIVER COMPETITION. *See* COMPETITION (RIVER).

ROUTES.

On shipments of horses and mules from Grand Island, Nebr., and Kansas City, Mo., to Montgomery, Ala., no joint rates in effect. Combination rates on St. Louis, Mo., and Cairo, Ill., assessed found to have been unlawful to extent they exceeded lower combination rates via Cairo, Ill., and Wickliffe, Ky. Reparation awarded. Wilke *v.* C. & A. R. R. Co. 73.

Combination rate on coconut oil from Boston, Mass., to Ivorydale, Ohio, reconsigned to Kansas City, Mo., exceeded lower rate over another route, which was subsequently established over route of movement. Reparation awarded. Procter & Gamble Co. *v.* B. & A. R. R. Co. 131.

Proposed cancellations of routes for movement of lumber, under joint rates, from points on the S. A. L. and A. C. L. to eastern port cities and interior eastern territory, through Petersburg and Richmond, Va., and Hagerstown, Md., justified in part. Lumber from the Southeast, 191 (196).

The appearance in a tariff of arbitraries to be allowed connecting carriers beyond a certain gateway does not define the route to be used in reaching that gateway. Id. (193).

Proposed cancellation of the route through Florence, S. C., Wadesboro, N. C., and Hagerstown, Md., on lumber from Atlantic Coast Line points, north and east of the line from Wadesboro to Charleston, S. C., justified. Id. (195, 197).

Commission not impressed with the argument that the absence of divisional arrangements between the carriers is justification for closing any available and useful route. Id. (197).

The existence of a lower rate over routes other than route of movement does not of itself warrant a condemnation of the rate charged. Combination rate on strawberries from Villa Ridge, Ill., to La Crosse, Wis., specifically routed, not shown unreasonable. Lamb Co. *v.* C., M. & St. P. Ry. Co. 238.

ROUTES—Continued.

Class rate on lumber from Nadawah, Ala., to Cartersville, Ga., found unreasonable to extent it exceeded combination rate in effect via another route and subsequently established over route of movement. Reparation awarded. American Lumber & Export Co. *v.* L. & N. R. R. Co. 259.

On two carloads of lumber billed from Potlatch, Idaho, to Victoria, Ill., C., P. & St. L. Ry. delivery, that station abandoned but was still carried in tariff. Victoria, Knox County, Ill., intended. Shipments forwarded to intended destination, one via a circuitous route. *Held:* Initial carrier accepted shipments under bills of lading impossible of execution and failure to send both over a direct route found to result in damages. Reparation awarded. Potlatch Lumber Co. *v.* W., I. & M. Ry. Co. 277.

On lumber from Midland City, Ala., to Bradley, Ill., routing instructions specified P. R. R. to receive line haul, but named no junction point. Forwarded via route carrying combination rate higher than via routes over which there were lower joint rates. *Held:* Shipment not misrouted. Southern Pine Lumber Co. *v.* A. C. L. R. R. 423.

On potatoes from Pardeeville, Wis., to Marion, N. C., routing instructions inserted in bill of lading, but no rate or junction point. Instructions followed and shipment forwarded via route carrying a higher rate. *Held:* Shipment not misrouted. Murphey Co. *v.* C., M. & St. P. Ry. Co. 427.

On yellow-pine lumber from Epley, Miss., to Lattimer Mines, Pa., charges exceeded combination rate legally applicable. Shipment could have moved to destination via route taking lower rate. *Held:* Misrouted by initial carrier. Reparation awarded. Chicago Lumber & Coal Co. *v.* A. G. S. R. R. Co. 481.

ROUTING INSTRUCTIONS. *See* MISROUTING.

RULES OF PRACTICE. *See* ADMINISTRATIVE RULING; PLEADING AND PRACTICE.

SECTION 1.

By section 1 all terminal facilities of every kind used or necessary in the transportation or delivery of property, moving as defined therein, are included in the term "railroad" as used in the act. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (549).

Construed as to Commission's jurisdiction as to use of privately owned cars. In re Private Cars, 652 (672).

Provisions of, as amended June 18, 1910, applicable to telegraph, telephone, and cable companies, construed. Private Wire Contracts, 781 (756).

SECTION 2. *See also* LIKE KINDS OF TRAFFIC; CIRCUMSTANCES AND CONDITIONS.

Staves, on the one hand, and lumber, laths, shingles, timber, crossties, and box shooks, on the other, do not constitute such "like traffic" that a different charge for their transportation is violative of section 2. Moore Stave Co. *v.* S. A. L. Ry. Co. 229 (230).

"Like kinds of traffic," construed. Oregon Fruit Co. *v.* S. P. Co. 719 (721).

SECTION 4. *See also* LONG AND SHORT HAUL; THROUGH AND LOCAL.

Proposed increased rates on pine and cypress lumber, from certain points in Arkansas to Kansas City, Mo., Omaha, Nebr., and other western points found not justified. Evidence relied solely upon an attempt to remove fourth section departures, relief of which was granted in 41 I. C. C., 565. Lumber from Arkansas Points, 118.

SECTION 6.

By section 6 carriers subject to the act are required to file with the Commission schedules showing "all terminal charges * * *, all privileges or facilities granted or allowed and any rules or regulations which

SECTION 6—Continued.

in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the * * * shipper, or consignee." Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (549).

Word "property" of that part of section 6, as amended by the Panama Canal act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates between rail and water carriers. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (631, 632).

While section 6 of the act does not require telegraph and telephone companies to publish and file their charges for interstate transmission of messages, other sections require that such charges shall be just and reasonable and neither unduly preferential nor unduly prejudicial. Private Wire Contracts, 731 (764).

SECTION 13.

Section 13 of the act quoted in part in denying motion to withdraw complaint. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (39, 40).

SECTION 15. *See also* APPLICATION.

A plant facility under section 15 of the act may lawfully have an allowance out of a carrier's line-haul rate when performing a service of carriage for it. National Tube Co. *v.* B. & O. R. R. Co. 489 (495).

Contention that reimbursement of actual expenses incurred in furnishing a transportation facility which defendants were under obligation to supply, may properly be made under section 15, and that refusal of defendant to make refund has been occasioned solely by its neglect to incorporate in the tariffs the fact and amount of the allowance, admitted. Lehigh Coal & Nav. Co. *v.* P. R. R. Co. 543 (544).

Commission empowered to determine what is a reasonable charge as maximum to be paid by carriers for service rendered, under section 15. In re Private Cars, 652 (671).

Access to the billing of a shipper by another and a competitor is unlawful, under section 15. Id. (704).

SHORT LINES. *See* TAP LINES.

SIDING.

The typical siding ordinarily does not exceed a few hundred feet in length. National Tube Co. *v.* B. & O. R. R. Co. 489 (497).

SPECIAL EQUIPMENT.

On street-washing machines, l. c. l., from Milwaukee, Wis., to Savannah, Ga., Pine Bluff, Ark., Greenville, Tex., and Chicago, Ill., moving in special equipment, no specific rating applicable. Class rates applicable to sprinkling wagons, an analogous article assessed, not shown unreasonable or prejudicial as compared with rates on various types of heavy vehicles. Kindling Machinery Co. *v.* C. & N. W. Ry. Co. 314.

Published rates of carriers include the furnishing of refrigerator or other cars of special design. In re Private Cars, 652 (679).

The wide diversity of traffic and the special transportation that many carriers perform would make a car special in one section of the country, or over one railroad, that would, in another section or over other railroads, be an ordinary car. Id. (679).

Any attempt to state separate charges for furnishing cars of special types would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight. Id. (680).

It is doubtful if carriers could be required to furnish live poultry and palace stock cars which are specialized to a high degree. Id. (690).

SPLIT DIFFERENTIALS.

Rates on light steel rails from Huntington, W. Va., to Atlantic ports, during period in question, were unreasonable to extent that they exceeded 77-60ths of the domestic rates from Pittsburgh to New York, with rates to Philadelphia and Baltimore 20 and 30 cents, respectively, under the rate to New York, using the "split differentials." West Virginia Rail Co. *v.* C. & O. Ry. Co. 110 (115).

SPOTTING CARS.

There is no distinction in the entire range of railroad services that is more vital in the fair and reasonable distribution of the burdens of transportation than the distinction between the spotting of cars on the ordinary private spur track or siding and the spotting of cars on the intricate net work of tracks beyond the plant interchange tracks. National Tube Co. *v.* B. & O. R. R. Co. 489 (497).

Placing a car on plant interchange tracks should be regarded as a fair equivalent to the spotting of a car on spur track. Id. (497).

As stated by the courts to the contention that lawful delivery may be effected by the line-haul carriers only by placing the inbound cars at the unloading points within the industry or by paying the industry for doing the service itself, does not conform "to the standard of custom" also fails when tested by the standard of reason. Id. (498).

If line carrier attempted to distribute cars within a plant immediately upon arrival at the plant interchange point "it would in effect take possession of the works and put" the industry "out of business." Id. (498).

SPUR TRACK.

The typical spur track ordinarily does not exceed a few hundred feet in length. National Tube Co. *v.* B. & O. R. R. Co. 489 (497).

STATE AND INTERSTATE.

Upon further hearing, distance rates and carload minimum applicable to commercial fertilizer, higher than for like distances between points in North Carolina, found to be unduly prejudicial to Norfolk, its manufacturers and shippers of commercial fertilizer and in favor of North Carolina points, the manufacturers at such points, and the shippers thereof between points in that State. Reasonable distance rates and carload minimum prescribed. Royster Guano Co. *v.* A. C. L. R. R. Co. 34.

The level of the interstate rates on fertilizer in the southeast is influenced by that of the intrastate rates, and there are no transportation conditions justifying higher rates, distances considered, from Norfolk, Va., into North Carolina than between points within North Carolina. Id. (41).

Sixth-class rate assessed on wrapping paper from Fort Edward to North Tonawanda, N. Y., via Sayre, Pa., not shown unreasonable as compared with lower rate via shorter intrastate route to Niagara Falls, N. Y., a farther distant point. International Paper Co. *v.* D. & H. Co. 75.

Maintenance of higher interstate minimum on flour between Kansas, Nebraska, Oklahoma, Texas, Arkansas, Missouri, and Iowa than the minima applied to intrastate transportation of flour within those states found unduly prejudicial to complainants and to interstate commerce. Kansas City Millers' Club *v.* A., T. & S. F. Ry. Co. 170 (182).

Holding in *Houston & Texas Ry.* v. *U. S.*, 234 U. S. 342, that it is within the Commission's power and its duty to remove all unjust discriminations against interstate traffic caused by state rates, applies also for the removal of unjust discrimination brought about by different carload minima. Id. (182).

STATE AND INTERSTATE—Continued.

Prior to movement of relaying steel rails, complainant entered into contract with dealers at Portland, Oreg., for delivery f. o. b. that point. Dealers entered into arrangement for delivery at Portland of rails stored at Auburn, Wash., and they were so forwarded as company material. Upon arrival at Portland they were forwarded to Crisp, Simpson, and Fall City, Oreg. *Held:* Transportation beyond Portland was intrastate, and beyond jurisdiction of Commission. Valley & Siletz R. R. Co. *v.* S. P. Co. 223.

On petroleum tailings in tank cars from Okmulgee, Okla., to Gretna, La., back hauled to Amesville, La., for barreling, and reshipped to Westwego and New Orleans, La., for export, complainant alleges to have taken possession of shipments at Gretna, thereby rendering intrastate switching charge for back haul movement. *Held,* Possession at Gretna insufficient to change character and charges not shown unreasonable. American Refining Co. *v.* St. L. & S. F. R. R. Co. 270.

While difference between rates on wheat from Texas points to Las Cruces, N. Mex., and to El Paso, Tex., is large, the mere existence of the intrastate distance rates to El Paso without a showing that any shipments ever moved thereunder, affords no basis for a condemnation of the interstate rates to Las Cruces. Mesilla Valley Produce Exchange *v.* A., T. & S. F. Ry. Co. 483 (485, 486).

STATIONS.

On two carloads of lumber billed from Potlatch, Idaho, to Victoria, Ill., C., P. & St. L. Ry. delivery, that station abandoned but was still carried in tariff. Victoria, Knox County, Ill., intended. Shipments forwarded to intended destination, one via a circuitous route. *Held:* Initial carrier accepted shipments under bills of lading impossible of execution and failure to send both over a direct route found to result in damages. Reparation awarded. Potlatch Lumber Co. *v.* W., I. & M. Ry. Co. 277.

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

STOCK OWNERSHIP.

Question whether or not a railroad company can be guilty of discrimination when the preferential treatment which produces the discrimination is accorded a steamship company which it owns by stock control, must be answered in the affirmative and the idea that jurisdiction of the Commission is defeated by reason of such common ownership must be untenable. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

STOCKYARDS.

Live-stock depot at Nashville moved from Seventeenth Avenue to Second Avenue, March 21, 1916. Change not shown in tariff until September 15, 1916. Tariff of one defendant became effective July 25, 1916, showing old location. Change of yards necessitated the driving of mules 1½ miles through town. *Held:* Denial of service at old yard prior to September 15, 1916, was the taking away of a privilege granted by tariff. Reparation awarded. Guyton & Harrington Mule Co. *v.* L. & N. R. R. Co. 546 (552).

STOPPAGE IN TRANSIT.

Reparation awarded on a car partly loaded with electrical machinery from Oakley, Ohio, consigned to Bingham, Utah, due to initial carrier's failure to stop at Brighton, Ohio, to complete loading as directed in bill of lading, which necessitated movement of machinery from Brighton as a separate shipment. Galigher Machinery Co. *v.* B. & O. S. W. R. R. Co. 488.

TARIFF—Continued.

are not proper tariff provisions, are not required to be published, and that the Commission had no authority to suspend them, not sustained. Express Charges on Empty Fish Cars, 24 (25, 26).

Failure to post tariffs as required by law, though it may subject carriers to penalties, does not invalidate the tariff when it has been properly filed with the Commission. Terre Haute Paper Co. *v.* St. L.-S. F. Ry. Co. 141 (142).

Modified transit provisions of tariffs of St. L. & S. F. R. R., applicable to grain, from points in Oklahoma, milled at Arkansas City, Kans., and reshipped beyond, cited and construed. Certain provisions found to conflict prior to amendment and refund of outstanding overcharges authorized. New Era Milling Co. *v.* St. L. & S. F. R. R. Co. 207.

The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignment bore symbols denoting both increase and reduction, did not affect the validity or applicability of the item, as it was allowed to become effective in each instance. Id. (210).

TARIFF CIRCULAR. *See* ADMINISTRATIVE RULING.

TARIFF INTERPRETATION.

Contention that the line-haul rates were sufficiently high to include allowance for unloading shipments of fresh beef from car floats to vessels' slings at the port of New York. *Held:* Shipments came within the exception "in bulk" and failure to make an allowance not found unlawful or unreasonable. Swift & Co. *v.* B. & O. R. R. Co. 108.

TARIFF RULE.

Rate on baled straw of $27 per car in effect prior to movement of shipments. Schedules seeking increase to $31 suspended. While schedules under suspension the $27 rate was canceled. Order vacated September 30, 1915, and rate of $31 then became effective. *Held:* Change was in violation of the Commission's tariff rules and of the spirit of the suspension order and rates charged prior to September 30, 1915, found unreasonable and illegal thereafter. Reparation awarded. Terre Haute Paper Co. *v.* St. L.-S. F. Ry. Co. 141.

The establishment of a two-for-one rule where carriers have provided double-deck rates and minima, different from single-deck rates and minima, has become almost universal in cases where carriers' tariffs provide varying minima according to the size of the car. Cleveland Provision Co. *v.* A. A. R. R. Co. 293 (296).

Tariff provisions, manifestly established to control or influence the outbound movement of cotton to Memphis, Tenn., for concentration or compression and reshipment beyond, and denying refunds on basis of through rates from original points of shipment, found unreasonable. Reparation awarded. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345.

Charges and tariff rules governing the movement of peddler cars from Cleveland, Ohio, to points in C. F. A. and trunk line territories found unreasonable to extent they exceed charges based on third-class rate from point of origin to final destination, minimum 12,000 pounds, and unduly prejudicial to Cleveland as compared with rules from Buffalo, N. Y. Cleveland Provision Co. *v.* B. & O. R. R. Co. 612.

SWITCHING—Continued.

the charges maintained for intracity switching between elevators and mills shall also be absorbed. Toledo Switching Absorption, 18.

Tariff rule under suspension providing that "any charge for transportation of tonnage transferred from one transit house to another shall be in addition to the rate" not shown unreasonable or unduly prejudicial, and permitted to become effective. Id. (18).

On shipments of coal from points in Kentucky to complainant's yard at Ottawa, Ohio, switching charge of $3 per car formerly absorbed by line-haul carrier was cancelled as applying to team tracks, and the delivering line is now demanding an increased charge for switching service of 40 cents per ton. *Held:* Increased charge not justified and any charge to complainant's yard in addition to line-haul rate to Ottawa will be unreasonable. Ottawa Coal & Supply Co. *v.* D., T. & I. R. R. Co. 87 (88).

The Commission has no authority, in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. Du Pont de Nemours Powder Co. *v.* P. R. R. Co. 203 (204).

SWITCHING DISTRICT.

Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts. In re Private Cars, 652 (686, 709).

TANK CARS.

Where carriers own tank cars which are furnished to shippers on request, they shall publish in their tariffs rules for the distribution thereof whereby each shipper who makes reasonable request may receive his proportionate share of available cars. In re Private Cars, 652 (695, 709).

Contended that if the Commission has not the power to require carriers to furnish tank cars it should be given it by proper legislation, *Held:* System of use and supply of private cars that now exists can not be at once and radically changed without serious consequences to shippers, carriers, and the public. Id. (673).

The shipper who is assured of the exclusive use of a tank car, and consequently of the condition of the tank for the receipt of his lading, enjoys an advantage not afforded by a system in which, if the cars were furnished by railroads, he would not have such exclusive use of the car, and for this advantage the shipper ought to bear some proportion of the cost of ownership and maintenance. Id. (681).

Average movement about 25 miles per day. Id. (690).

TAP LINE.

Combs, Cass & Eastern R. R. Co. found to be a common carrier entitled to maintain and divide joint rates with the St. L.-S. F. Ry. Co. Divisions paid by St. L.-S. F. Ry. Co. on interstate shipments of lumber and forest products should not exceed the maximum prescribed in *The Tap Line Case*, 31 I. C. C., 490. Combs, Cass & Eastern R. R. Co. 221.

Joint class D rate of 38 cents per 100 pounds on staves and other forest products from Etoile, Tex., and other points on the A. & N. R. R. R., a tap line to New Orleans, La., not found preferential of Galveston, Tex., but found unlawful and unreasonable to extent it exceeded the aggregate of the intermediate rates to and from Lufkin, Tex. Reparation awarded. Carriere *v.* A. & N. R. R. R. Co. 280.

TARIFF. *See also* AMBIGUOUS TARIFF.

Certain provisions in the schedules for proposed increased rates for movement of empty fish cars were nonessential to the legal establishment of a rate for their transportation. Contention that schedules proposed

THROUGH ROUTES AND JOINT RATES—Continued.

thence via the Western Maryland and its connections to points on its line and in C. F. A. territory, not in excess of those maintained via the Pennsylvania and Baltimore and Ohio systems should be established. Eastern Shore of Virginia Produce Exchange *v.* W. M. Ry. Co. 60.

On pine and fir lumber from Harrison, Springston, and Rose Lake, Idaho. to points local to N. P. Ry. east of Billings, Mont., in Montana, North Dakota, and Minnesota, the rates from points of origin to Minneapolis, not to exceed rates from Spokane, graded westwardly therefrom so as not to exceed 2 cents above rates from Spokane to Beach, N. Dak., at the latter point. Springston Lumber Co. *v.* N. P. Ry. Co. 591 (595).

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., in connection with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with complainant, found to result in undue prejudice. Joint passenger fares no higher than those maintained by the N. E. S. S. Co., required to be established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

Jurisdiction conferred by the act of 1912, in so far as it relates to transportation of property, is not subject to limitation as to through routes and joint rates contained in section 15 of the general act. Id. (630).

To apply the limitation of section 15 to cases which involve questions as to the propriety and feasibility of through routes and joint rates between and over rail-and-water lines would be inconsistent with the comprehensive and all-embracing authority plainly intended to be accorded by the Panama Canal act. Id. (630).

Under the act as it stood prior to the amendment of 1912 the Commission had authority to establish through routes and joint rates or fares for passenger traffic, and yet nowhere is such authority given in specific terms. It arises out of consideration of the act as a whole. Id. (631):

Word "property" of that part of section 6, as amended by the Panama Canal act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates between rail and water carriers. Id. (631, 632).

Allegation by defendants that inasmuch as it now furnishes a rail-and-water route to and from New York City, it can not be required to share its traffic with a competitor not sustained, following *Flour City S. S. Co. Case*, 24 I. C. C., 179, in which case an additional route was required to be established. Id. (632–633).

TON-MILE REVENUE. *See also* EARNINGS.

In general:

While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co. 610 (611, 612).

Rails, steel: Rate, short line distance and long ton-mile earnings on, from Johnstown and Pittsburgh, Pa., Buffalo, N. Y., and Newark, Ohio, to Cleveland, Ohio, shown. West Virginia Rail Co. *v.* C. & O. Ry. Co. 69 (72).

TELEPHONE AND TELEGRAPH COMPANIES. *See also* PRIVATE WIRE SERVICE.

The lawfulness of the so-called private-wire service depends upon whether or not private-wire messages are among "such other classes as are just and reasonable" into which respondent carriers are authorized by section 1 of the act to classify messages transmitted over their lines. Private Wire Contracts, 731 (756).

Respondents are common carriers engaged in the transmission of intelligence, and, as to their interstate business, are subject to the provisions of the act. Id. (757).

While section 6 does not require telegraph and telephone companies to publish and file their charges for interstate transmission of messages, other sections require that such charges shall be just and reasonable, and neither unduly preferential nor unduly prejudicial. Id. (764).

THROUGH AND LOCAL. *See also* SECTION 4.

Combination rate on lumber from Pace Junction, Fla., to Middlesborough, Ky., through Birmingham, Ala., subsequently reduced to equal aggregate of intermediate rates to and from Birmingham. Reparation awarded. Carolina Portland Cement Co. *v.* L. & N. R. R. Co. 98.

Fourth-class rate on sulphuric acid from Fayville, Ill., to Ishpeming, Mich., exceeded aggregate of intermediate rates to and from Chicago, Ill. Reparation awarded. Aetna Explosives Co. *v.* C. & E. I. R. R. Co. 106.

Rate on potatoes from Grand Fork, N. Dak., to Spiro, Okla., exceeded the aggregate of intermediate rates to and from Kansas City. Reparation awarded. Fort Smith Commission Co. *v.* K. C. S. Ry. Co. 135.

Authority to continue rates on cypress lumber from Sorrento, Plaquemine, and Garyville, La., to Storm Lake, Iowa, higher than the aggregate of intermediate rates to and from Des Moines, Iowa, denied. Storm Lake Tank & Silo Co. *v.* L. Ry. & N. Co. 198 (200).

Joint class D rate on staves and other forest products from Etoile, Tex., and other points on the A. & N. R. R. R., to New Orleans, La., found unlawful and unreasonable to extent it exceeded the aggregate of the intermediate rates to and from Lufkin, Tex. Reparation awarded. Carriere *v.* A. & N. R. R. R. Co. 280.

Class E rates on common building brick from Dow, Ill., to Sedalia, Mo., exceeded aggregate of intermediate rates and carload minima in effect to and from Alton, Ill. Reparation awarded. Illinois Supply & Construction Co. *v.* C., P. & St. L. R. R. Co. 449.

Allegation that rates on sewer pipe from Ohio points to certain destinations in Wisconsin and Michigan which exceeded the aggregates of proportional rates plus the rates beyond was in violation of section 4, *Held:* Proportional rates are not intermediate rates within the meaning of section 4. Williams Co. *v.* P. Co. 531 (536).

THROUGH RATES.

Practicability of recommendation that American lines withdraw from existing joint through rates on fruits and vegetables moving to and from Canadian points and the publication of local or proportional rates to and from the border, is doubtful. Heated-Car Service Regulations, 620 (623).

THROUGH ROUTES AND JOINT RATES.

Through routes and joint rates on vegetables from wharves in Accomac and Northampton counties, Va., by steamboat to Baltimore, Md., and

THROUGH ROUTES AND JOINT RATES—Continued.

thence via the Western Maryland and its connections to points on its line and in C. F. A. territory, not in excess of those maintained via the Pennsylvania and Baltimore and Ohio systems should be established. Eastern Shore of Virginia Produce Exchange *v.* W. M. Ry. Co. 60.

On pine and fir lumber from Harrison, Springston, and Rose Lake, Idaho. to points local to N. P. Ry. east of Billings, Mont., in Montana, North Dakota, and Minnesota, the rates from points of origin to Minneapolis, not to exceed rates from Spokane, graded westwardly therefrom so as not to exceed 2 cents above rates from Spokane to Beach, N. Dak., at the latter point. Springston Lumber Co. *v.* N. P. Ry. Co. 591 (595).

Practice of defendants in maintaining a through route between New York, N. Y., via Providence, R. I., in connection with the New England S. S. Co., which it controls through stock ownership, while refusing to establish a similar route with complainant, found to result in undue prejudice. Joint passenger fares no higher than those maintained by the N. E. S. S. Co., required to be established. Colonial Nav. Co. *v.* N. Y., N. H. & H. R. R. Co. 625 (633).

Jurisdiction conferred by the act of 1912, in so far as it relates to transportation of property, is not subject to limitation as to through routes and joint rates contained in section 15 of the general act. Id. (630).

To apply the limitation of section 15 to cases which involve questions as to the propriety and feasibility of through routes and joint rates between and over rail-and-water lines would be inconsistent with the comprehensive and all-embracing authority plainly intended to be accorded by the Panama Canal act. Id. (630).

Under the act as it stood prior to the amendment of 1912 the Commission had authority to establish through routes and joint rates or fares for passenger traffic, and yet nowhere is such authority given in specific terms. It arises out of consideration of the act as a whole. Id. (631):

Word "property" of that part of section 6, as amended by the Panama Canal act, construed to apply to passenger and freight traffic, in the establishment of through routes and joint rates between rail and water carriers. Id. (631, 632).

Allegation by defendants that inasmuch as it now furnishes a rail-and-water route to and from New York City, it can not be required to share its traffic with a competitor not sustained, following *Flour City S. S. Co. Case*, 24 I. C. C., 179, in which case an additional route was required to be established. Id. (632–633).

TON-MILE REVENUE. *See also* EARNINGS.

In general:

While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club *v.* G. N. Ry. Co. 610 (611, 612).

Rails, steel: Rate, short line distance and long ton-mile earnings on, from Johnstown and Pittsburgh, Pa., Buffalo, N. Y., and Newark, Ohio, to Cleveland, Ohio, shown. West Virginia Rail Co. *v.* C. & O. Ry. Co. 69 (72).

TON-MILE REVENUE—Continued.

Rails, steel: Comparative statement of rates and long ton-mile earnings on, from Sparrows Point, Md., to various points in C. F. A. territory shown. West Virginia Rail Co. *v.* P. R. R. Co. 304 (305).

Sirup, Delaware punch: Table of rates, distances, and ton-mile earnings, on Delaware punch sirup from San Antonio, Tex., to San Francisco and Los Angeles, Cal., and to Phoenix, Tucson, and Globe, Ariz., shown. Delaware Punch Co. of Texas *v.* A., T. & S. F. Ry. Co. 29 (31).

TONNAGE. *See* VOLUME OF TRAFFIC.

TRAIN SPEED.

Average movement of tank cars appears to be about 25 miles per day. In re Private Cars. 652 (690).

TRAINLOADS.

Mere fact that certain traffic is hauled in trainload lots can not be made the basis of rates different from those applied to shipments in single carloads. Private Wire Contracts, 731 (758).

TRANSIT ARRANGEMENTS. *See also* STOPPAGE IN TRANSIT.

In general:

Transit rights must be specifically authorized by tariff provision, they can not be inferred. Swift & Co. *v.* C., B. & Q. R. R. Co. 233 (234).

Barreling:

Charges on petroleum tailings in tank cars from Okmulgee, Okla., to Gretna, La., back hauled to Amesville, La., for barreling and reshipped to Westwego and New Orleans, La., for export, not shown unreasonable. American Refining Co. *v.* St. L. & S. F. R. R. Co. 270.

Concentration:

Tariff provisions, manifestly established to control or influence the outbound movement of cotton to Memphis, Tenn., for concentration or compression and reshipment beyond, and denying refunds on the basis of through rates from original points of shipment, found unreasonable. Reparation awarded. Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 345.

Creosoting:

On lumber from Bogalusa, La., to Indianapolis, Ind., there made into creosoted paving blocks and reshipped to Chicago, Ill., local rate of 9 cents from Indianapolis to Chicago assessed. Lower rate applied via Jackson, Miss. *Held:* Route specified by shipper was complete and initial carrier should have delivered shipments at Jackson, the point of direct connection. Republic Creosoting Co. *v.* N. O. G. N. R. R. Co. 201.

Dressing:

On l. c. l. shipments of live poultry from Missouri points to Trenton, Mo., there dressed, and shipped out in c. l. lots to interstate destinations, local l. c. l. rates into transit point found legally applicable. Concentration contemplated collection at a particular point of l. c. l. quantities for reforwarding in c. l. lots and plainly excluded substitution of any kind, and the dressing of the poultry changed its character precisely as dressed meats are made to differ from live stock. Swift & Co. *v.* C., B. & Q. R. R. Co. 233.

TRANSIT ARRANGEMENTS—Continued.

Inspection:

Carload of flour arrived at Jersey City, N. J., February 5, 1916, and complainant on February 12 requested car placed at Pier No. 5 for inspection. Due to congestion delivery not made until February 26, where it remained in storage until March 8, when bill of lading surrendered and shipment forwarded to Newark, N. J. Inasmuch as carrier failed to notify of its inability to deliver, storage charges assessed found illegal and demurrage not lawfully due. Reparation awarded. Youngblood (Inc.) *v.* C. R. R. Co. of N. J. 217.

Milling:

Modified transit provisions of tariffs of St. L. & S. F. R. R. applicable to grain, from points in Oklahoma, milled at Arkansas City, Kans., and reshipped beyond, cited and construed. Certain provisions found to conflict prior to amendment and refund of outstanding overcharges authorized. New Era Milling Co. *v.* St. L. & S. F. R. R. Co. 207.

Milling-in-transit arrangements of one form or another are said to be provided for forest products quite generally in the south. Complaint asking establishment of milling in transit at Mounds, La. *Held:* Such an arrangement would probably be of great advantage but record does not show just what is desired. Pelican Lumber Co. (Inc.) *v.* V. S. & P. Ry. Co. 540 (542).

On corn from certain points in Illinois, Iowa, Kentucky, and Tennessee, milled at Dyersburg, Tenn., and the products forwarded to various interstate points, local rates to and from Dyersburg assessed, not found unreasonable or prejudicial, inasmuch as complainant did not comply with the tariff requirements governing transit service. Forked Deer Milling Co. *v.* I. C. R. R. Co. 573.

Storing:

On wheat stored in transit at Springfield, Ohio, and reshipped to New York, N. Y., for export, transit tariff applied only to milling and malting. Storage in transit without additional charge was subsequently established. *Held:* Transit rules not applicable and combination rates assessed found unreasonable. Reparation awarded. Ansted & Burk Co. *v.* C., C., C. & St. L. Ry. Co. 371.

TRANSPORTATION.

Under an agreement with the P. R. R. Co., complainant performed a service which should have been performed by defendant, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware and Raritan Canal. Charges aggregated sum defendant would have borne had it transported the shipments. Refund authorized. Lehigh Coal & Navigation Co. *v.* P. R. R. Co. 543.

The language of the act is that transportation shall include "all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and hauling of property transported." In re Private Car, 652 (704).

TRANSPORTATION CONDITIONS.

The level of the interstate rates on fertilizer in the southeast is influenced by that of the intrastate rates and there are no transportation conditions justifying higher rates, distances considered, from Norfolk, Va., into North Carolina than between points in North Carolina. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (41).

TRAP-CAR SERVICE.

In original report, 42 I. C. C., 593, charges of the P. M. R. R. for trap-car service from complainants' factories to freight station at Grand Rapids, Mich., found not fully justified, and defendant on May 7, 1917, established charges covering this service, which charges, upon rehearing, found unreasonable to extent they exceeded $3 per car. Reparation awarded. Macey Co. *v.* P. M. R. R. Co. 555.

Drayage costs do not determine the reasonableness of charges for trap-car service. Id. (556).

TWO FOR ONE.

Where tariffs are maintained for the use of double-deck cars for the transportation of hogs, calves, sheep, lambs, and goats from primary markets, they should provide that when a double-deck car is ordered and, for the convenience of carriers, two single-deck cars are furnished, the charges therefore should be at the rate and minimum weight for the double-deck car ordered, provided two days, exclusive of day of notice, is allowed the carriers within which to furnish the car ordered. Cleveland Provision Co. *v.* A. A. R. R. Co. 293.

The establishment of a two-for-one rule where carriers have provided double-deck rates and minima different from single-deck rates and minima, has become almost universal in cases where carriers' tariffs provide varying minima according to the size of the car. Id. (296).

UNDERCHARGES.

On brass plated or coated iron rods from Wallingford, Conn., to Tacoma, Wash., commodity rate of $1.50 minimum 30,000 pounds assessed. Fifth-class rate of $1.90, minimum 36,000 pounds under western classification, legally applicable. *Held:* Legally applicable rate found unreasonable to extent it exceeded rate assessed. Waivure of undercharges authorized. Harmon & Co. *v.* N. Y., N. H. & H. R. R. Co. 455.

On peaches from Ridge Springs, S. C., to Philadelphia, Pa., billed "subject to correction" after consignee paid the freight charges, and acting as agent for consignor, sold shipments and remitted proceeds less commission and freight to consignor, defendants presented revised bill of lading naming correct rate and undercharges. *Held:* Undercharges due from party legally responsible but issue as to party legally liable, not within the Commission's jurisdiction. Wilson *v.* P. R. R. Co. 571.

UNIFORM CLASSIFICATION.

Apparent inequalities in ratings in contiguous territories where one defined territory borders upon or overlaps another forcibly presents the desirability of a single classification, uniform not only as to general rules and commodity descriptions common to all territories but likewise as to ratings. Johnson Service Co. *v.* A. A. R. R. Co. 361 (366).

VALUE. *See also* RELEASED RATES.

No values stated with respect to any of the shipments and higher rates were assessed. Had initial carrier's agent notified complainant of the difference in rates based on value, the values would have been declared and lower rates availed of. *Held:* Charges assessed not shown unreasonable or otherwise unlawful in that complainant failed to produce witnesses familiar with the facts or to introduce evidence with respect to packing and value of the shipments. Wise *v.* P. R. R. Co. 268 (269).

VALUE OF COMMODITY.

Lumber, box: Spanish cedar box lumber is from around 25 to 100 per cent more valuable than veneered cigar-box lumber, depending on the grade or quality of each. Knopke Brothers *v.* C. & A. R. R. Co. 465 (467).

Lumber, oak: Average carload of rough oak lumber, consisting of about 10,000 feet, is worth $45 per 1,000 feet, or $450, exclusive of freight. Ash Products Co. *v.* V. R. R. Co. 283 (284).

Sisal: The present value of a carload of sisal is approximately $5,000. Sisal from New Orleans, La. 13 (15).

Sulphur at the mine, normally and under abnormal conditions due to the war, is worth approximately twenty times the value of bituminous coal at the mine. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379 (383).

Tent pins, wooden: Selling price of an average carload of 16-inch pins, consisting of 50,000 pins, approximating 8,000 feet, is $525; 24-inch pins, consisting of 32,000 pins, approximating 8,500 feet, $408.96, delivered St. Louis. Ash Products Co. *v.* V. R. R. Co. 283 (284).

VALUE OF SERVICE.

While value of service is unquestionably a factor to be considered in establishing rates the value of a telegraphic communication is usually known only to the sender. Private Wire Contracts, 731 (751).

VOLUNTARY REDUCTION. *See* Reduction in Rates (By Carriers).

WAR.

Stated that domestic traffic was preferred to export traffic because the latter will diminish after the war. Kansas City Millers' Club *v.* A., T. & S. F. Ry. Co. 170 (176).

Sulphur at the mine, normally and under abnormal conditions due to the war, is approximately twenty times the value of bituminous coal at the mine. Meridian Fertilizer Factory *v.* B. R. R. & C. Co. 379 (383).

The growing costs of labor and materials which have been thrust upon the world by the European war are generally distributed. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436 (444).

Effect of the European war upon revenues of steamer lines operating between points on the eastern shore of Virginia and Baltimore, Md., shown. Id. (444, 445).

WATER AND RAIL. *See also* Rail and Water.

Through routes and joint rates on vegetables from wharves in Northampton and Accomac counties, Va., by steamboat to Baltimore, and thence via the Western Maryland and its connections to points on its line and in C. F. A. territory, not in excess of those maintained via the Pennsylvania and Baltimore & Ohio systems should be established. Eastern Shore of Virgina Produce Exchange *v.* W. M. Ry. Co. 60.

Joint rates on vegetables from wharves on the eastern shore of Virginia, by boat to Baltimore and Crisfield, Md., and thence by rail to western, northern, and eastern points, not found unreasonable or unduly prejudicial as compared with all-rail rates from near-by cross-country points. Eastern Shore of Virginia Produce Exchange *v.* A. & St. L. R. R. Co. 436.

WATER CARRIERS. *See* Boat Lines.

WATER COMPETITION. *See* Competition (Water).

WATER TRANSPORTATION. *See* Transportation.

WEATHER CONDITIONS.

On apples ordinarily moving in box cars from points in Michigan to points in Iowa, due to cold weather it was found necessary to use refrigerator cars. Under the circumstances charge of $5 per car per trip for their use found not unreasonable. Gamble Robinson Commission Co. *v.* A. & B. R. Ry. Co. 324.

WEIGHT. *See also* MAXIMUM WEIGHT; MINIMUM WEIGHT.

Erroneous:

On a carload of yellow-pine lumber from Allen, S. C., to Franklin, N. J., charges assessed based on weight registered by track scales of initial carrier at Wilmington, N. C., an intermediate point. Contention that charges were assessed on an excessive weight and should have been based on estimated weight, not sustained. Trexler Lumber Co. *v.* A. C. L. R. R. Co. 77.

Class rate charged on an iron tank from Lima, Ohio, to Bogalusa, La., found illegal and unreasonable to extent it exceeded charges based on the combination rates applicable to and from Slidell, La., and a weight of 8,500 pounds. Reparation awarded. Universal Iron & Supply Co. *v.* C., H. & D. Ry. Co. 266.

WHOLESALE RATES.

The so-called wholesale theory has no proper place in the rates of common carriers, and in so far as charges for private-wire service are based upon this theory, the Commission finds that the classification is not just and reasonable. Private Wire Contracts, 731 (757).

WHOLESALE SERVICE.

Record does not sustain conclusion that the Morse private-wire service is a wholesale service. Private Wire Contracts, 731 (761).

WITHDRAWAL.

Complaint: A complainant before the Commission can not, as a matter of right, withdraw his complaint and the undesirable consequences of permitting a complainant to terminate a proceeding whenever in his opinion his interests would thus be better served than by having it proceed to a conclusion, are obvious and require no exposition. Royster Guano Co. *v.* A. C. L. R. R. Co. 34 (40).

ZONE RATES.

Following finding made in original report, 37 I. C. C., 652, in which reasonable rates and zones were prescribed, Charlotte, N. C., was placed in zone 3. Petition for placing of Charlotte in zone 2, a lower rate group, upon rehearing found not justified, in that the proposed change would wholly disrupt the rate adjustment. Bituminous Coal Rates to the Southeast, 1.

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